

SWIDLER BERLIN SHEREFF FRIEDMA



0000030822

3000 K STREET, NW, SUITE 300  
WASHINGTON, DC 20007-5116  
TELEPHONE (202) 424-7500  
FACSIMILE (202) 424-7645  
WWW.SWIDLAW.COM

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NEW YORK OFFICE  
919 THIRD AVENUE  
NEW YORK, NY 10022-9998  
(212) 758-9500 FAX (212) 758-9526

January 8, 2001

AZ CORP COMMISSION  
DOCUMENT CONTROL

**VIA OVERNIGHT DELIVERY**

Arizona Corporation Commission  
Docket Control Center  
1200 West Washington Street  
Phoenix, AZ 85007-2996

DOCKET NO. T 03980A.01-0025

Re: Application and Petition of American Fiber Systems, Inc. for a Certificate of Convenience and Necessity to Provide Resold and Facilities-Based Local Exchange, Exchange Access and Interexchange Telecommunications Service in Arizona

On behalf of American Fiber Systems, Inc. ("AFS"), enclosed please find an original and ten (10) copies of AFS' Application for a Certificate of Convenience and Necessity to Provide Resold and Facilities-Based Local Exchange, Exchange Access and Interexchange Telecommunications Service in the State of Arizona. AFS' Petition for Competitive Classification of the Proposed Services is attached to this Application as Exhibit F.

Please date stamp the enclosed extra copy of this Application and return it in the self-addressed, postage-paid envelope provided. Should you have any questions concerning this filing, please do not hesitate to contact the undersigned at (202) 424-7500.

Respectfully submitted,

Ronald W. Del Sesto, Jr.

Counsel for:  
American Fiber Systems, Inc.

Enclosures

cc: Bruce Frankiewicz  
Robert Ridings

NEW APPLICATION

BEFORE THE  
ARIZONA CORPORATION COMMISSION

\_\_\_\_\_) )  
In the Matter of )

APPLICATION AND PETITION OF )

**American Fiber Systems, Inc.** )

Docket No.

For a Certificate of Convenience and Necessity )  
to Provide Resold and Facilities-Based Local )  
Exchange, Exchange Access, and )  
Interexchange Telecommunications Service )  
Within the State of Arizona )  
\_\_\_\_\_)

**DOCKET NO. T 03980A.01-0025**

**APPLICATION AND PETITION OF**  
**AMERICAN FIBER SYSTEMS, INC.**

American Fiber Systems, Inc. ("AFS" or "Applicant"), pursuant to Arizona Administrative Code R14-2-1103 and R14-2-1105,<sup>1</sup> hereby files this application for a Certificate of Convenience and Necessity ("CC&N") to provide all forms of resold and facilities-based local exchange, exchange access, and interexchange telecommunications service throughout the State of Arizona. AFS also hereby petitions the Commission for a determination that its proposed services are competitive pursuant to the requirements of Arizona Administrative Code ("A.A.C.") R14.2-1108. AFS' petition for competitive classification is attached hereto as Exhibit F.

<sup>1</sup> Rules established by Commission Opinion and Order (dated June 23, 1995) *In the Matter of the Notice of Proposed Rule Making Regarding Competitive Telecommunications Services*, in Docket No. R-0000-94-424, Decision No. 59124.

AFS submits that its presence in the Arizona telecommunications marketplace will serve to enhance competition, leading to the benefits for Arizona consumers that have in the past resulted from increased competition in telecommunications markets, including an enhanced variety of choices, an increase in the availability of high quality service, heightened technological and service innovations, and increased competitive pressures on the rates charged for services. AFS respectfully submits that the grant of its request for a Certificate of Convenience and Necessity to provide resold and facilities-based local exchange telecommunications service throughout the State of Arizona is consistent with the pro-competitive purposes of the Commission's Order in Docket No. R-0000-94-424 (Decision No. 59124), as well as the purposes of the Federal Telecommunications Act of 1996.

In support of its request, Applicant submits the following information as required by A.A.C. R14-2-1105:

## **II. DESCRIPTION OF APPLICANT**

Applicant's legal name is American Fiber Systems, Inc. Applicant maintains its principal place of business at:

100 Meridian Centre, Suite 250  
Rochester, NY 14618  
Telephone: (716) 340-5400  
Facsimile: (716) 340-5401

2. Correspondence or communications pertaining to this application should be directed to Applicant's attorney of record:

Ronald W. Del Sesto, Jr.  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007  
Telephone: (202) 945-6923  
Facsimile: (202) 424-7643

Email: rwdelsesto@swidlaw.com

3. Applicant's toll-free number for customer inquiries is: 1-877-566-0924
4. Questions concerning the ongoing operations of Applicant following certification should be directed to:

Bruce Frankiewicz  
American Fiber Systems, Inc.  
100 Meridian Center  
Suite 250  
Rochester, NY 14618  
Telephone: (716) 340-5400  
Facsimile: (716) 340-5401  
bfrankiewicz@metrofiberusa.com

Upon certification, copies of all notices, orders and other materials, and all inquiries, questions, and complaints concerning AFS' Arizona operations should be directed to Mr. Frankiewicz at the address listed above. Mr. Frankiewicz will also serve as liaison with the Commission for resolution of Commission and user inquiries and complaints.

5. AFS does not currently have a business office in the State of Arizona. AFS' Arizona agent is:

CT Corporation System  
3225 North Central Avenue  
Phoenix, Arizona 85012

6. AFS is a company organized under the laws of the State of Delaware and is a wholly-owned subsidiary of American Fiber Systems Holding Corp. Copies of AFS' Certificate of Incorporation and Certificate of Authority to Transact Business in the State of Arizona are attached as Exhibit A. Also attached as Exhibit A is a copy of the Certificate of Incorporation of American Fiber Systems Holding Corp.

7. The names, addresses and telephone numbers of the officers and directors of Applicant are as follows:

**Officers:**

David Rusin	President and Chief Executive Officer
David Baxter	Vice President—Operations and Engineering
David Danchak	Vice President—Business Development
Bob DeRosa	Vice President—Marketing
Gita Ramachandran	Chief Financial Officer

**Directors:**

David Rusin  
Jeffrey Drazen

All Officers and Directors may be reached at the Applicant's offices at:

American Fiber Systems, Inc.  
100 Meridian Centre, Suite 250  
Rochester, NY 14618  
Telephone: (716) 340-5400  
Facsimile: (716) 340-5401

## **II. TECHNICAL, MANAGERIAL AND FINANCIAL QUALIFICATIONS**

1. AFS possesses the technical capability and managerial qualifications to operate and manage its telecommunications operations in the State of Arizona. Descriptions of the extensive telecommunications and managerial experience of AFS' key personnel are attached hereto as Exhibit B. The descriptions demonstrate the technical and telecommunications expertise and experience of the Applicant's management team.

AFS has authority to provide telecommunications services in Kansas, Missouri, Nevada, New York and provisional authority in Pennsylvania. AFS is in the process of obtaining authority to provide telecommunications service in the following states: California, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Iowa, Indiana, Illinois, Kentucky, Louisiana,

Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington and Wisconsin. AFS has not been denied such authority in any jurisdiction, nor has it had a permit, license or certification revoked.

2. AFS is financially qualified to provide telecommunications services in Arizona. In particular, Applicant has access to the financing and capital necessary to conduct its telecommunications operations as specified in this application. In support of this Application, AFS is providing, as Exhibit C, its most recent pro forma financial statements. This exhibit is being offered to demonstrate AFS' financial ability to provide the proposed services in Arizona. Applicant possesses the sound financial resources necessary to effectively procure, install, and operate the facilities and services requested in this Application.

### **III. DESCRIPTION OF SERVICES**

1. AFS seeks authority to provide facilities-based, dedicated and private line, fiber optic transmission services throughout the State of Arizona within all areas for which the Commission will grant such authority. Initially, AFS will operate in the service area of US West; however, AFS seeks statewide authority so that in the future it may expand its service areas as market conditions may warrant. Applicant may supplement this service with other resold services provided by incumbent local exchange carriers, competitive local carriers, and/or interexchange carriers.

Applicant intends to construct a facilities-based dedicated and private line, fiber optic communications infrastructure. Applicant's network is capable of using high capacity transmission to support advanced capacity-intensive data applications such as frame relay, ATM, multimedia, and Internet-related applications. Applicant intends to lease its dedicated and

private line fiber optic communications infrastructure to wholesale carriers and large corporate and government customers for high bandwidth, secure voice and data networks.

Applicant believes that the advanced technical characteristics of its network will allow it to be capable of providing the highest levels of reliability, security, and capacity that its target customers typically demand. Additionally, Applicant's network is designed to provide added flexibility by allowing its customers to choose the desired optronics to light Applicant's fiber strands based on the reliability, security, and capacity needs of its customers. AFS will continuously monitor and maintain a high level of control over its network on a 24-hour basis through its network operations center.

Initially, AFS may lease the fiber optic facilities of other carriers while its own facilities are being built. As the Applicant completes the build-out of its network, the Applicant will move this traffic onto its own Network.

AFS will initially provide high-bandwidth, fiber optic, point-to-point capacity to Internet and telecommunications companies on a wholesale basis. The rates and charges for such wholesale services will be developed on an individual contract basis ("ICB") in response to each particular customer's request for service, taking into account the nature of the facilities and service, the costs of construction and operation, the volume of traffic, the length of service commitment by the customer, and use of facilities by other customers. Such arrangements will be made available to similarly situated customers on a non-discriminatory basis. AFS will tariff applicable rates as it expands its offerings to include a full range of retail offerings.

2. Geographic Areas to be Served. AFS intends to provide telecommunications service to and from all points within the State of Arizona. AFS initially plans to provide exchange access in the exchange areas of US West and currently does not plan to provide local exchange service

in areas of Arizona that are served by small or rural local exchange carriers (as defined in the Telecommunications Act of 1996). However, AFS seeks statewide authorization so that it may expand its local service areas in the future as market conditions may warrant. A copy of a map depicting AFS' initial service area (which mirrors the existing service territory of US West) is attached hereto at Exhibit D.

3. Tariff. AFS' proposed tariff is attached hereto as Exhibit E.

4. Interconnection/Resale Agreement. AFS is in the process of obtaining an interconnection agreement with US West.

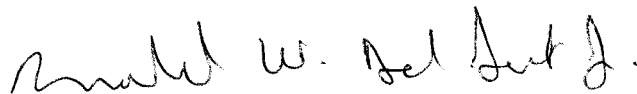
5. Competitive Classification. The Commission has promulgated rules governing the provision of competitive telecommunications services in Arizona. As a threshold matter, telecommunications companies must petition the Commission for classification of the Applicant's service offerings as competitive. AFS' petition for competitive classification is attached hereto as Exhibit F.



### III. CONCLUSION

Based on the foregoing, American Fiber Systems, Inc. respectfully requests that the Commission grant it a Certificate of Convenience and Necessity to provide resold and facilities-based local exchange, exchange access, and interexchange telecommunications services as described in this Application, and granting such additional or further relief as may be necessary or appropriate.

Respectfully submitted,



Ronald W. Del Sesto, Jr.  
SWIDLER BERLIN SHEREFF FRIEDMAN, LLP  
3000 K Street, NW, Suite 300  
Washington, D.C. 20007  
Telephone: (202) 424-7500  
Facsimile: (202) 424-7645

Counsel for:  
American Fiber Systems, Inc.

Dated: January 8, 2001

## **EXHIBITS**

Exhibit A	Certificates of Incorporation and Certificate of Authorization to Transact Business in Arizona
Exhibit B	Managerial Qualifications
Exhibit C	Financial Qualifications
Exhibit D	Initial Service Area Map
Exhibit E	Proposed Tariff
Exhibit F	Petition for Competitive Classification
Verification	

**EXHIBIT A**

Certificates of Incorporation and  
Certificate of Authorization to Transact Business in Arizona

*Office of the Secretary of State*

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I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "AMERICAN FIBER SYSTEMS, INC.", FILED IN THIS OFFICE ON THE TWENTY-FOURTH DAY OF MARCH, A.D. 2000, AT 9 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE KENT COUNTY RECORDER OF DEEDS.



A handwritten signature in cursive script, reading "Edward J. Freel", is written over a horizontal line.

Edward J. Freel, Secretary of State

3197781 8100

001150287

AUTHENTICATION: 0337391

DATE: 03-24-00

**CERTIFICATE OF INCORPORATION**

**OF**

**AMERICAN FIBER SYSTEMS, INC.**

1. The name of the corporation is "American Fiber Systems, Inc."
2. The address of its registered office in the State of Delaware is 15 North Street, Dover, Kent County, Delaware 19901. The name of its registered agent at that address is Nationwide Information Services, Inc.
3. The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.
4. The total number of shares of stock which the corporation shall have authority to issue is three thousand (3,000) shares of common stock, with a par value of one cent (\$0.01) per share.
5. The name and mailing address of the incorporator is Donald R. Adair, c/o Adair Law Firm, 30 Corporate Woods, Rochester, New York 14623.
6. The corporation is to have perpetual existence.
7. The Board of Directors shall have the power to adopt, amend, or repeal the by-laws of the corporation. Election of directors need not be by written ballot.
8. No person shall be elected a director of the corporation, and no director shall be removed as a director, except (a) at a duly called and held meeting of the stockholders entitled to vote in the election or removal, (b) by written consent signed by all the holders of outstanding stock entitled to vote in the election or removal, or (c) by action of the Board of Directors in accordance with Section 223 of the Delaware General Corporation Law as it exists or may be amended or other applicable law, or any successor thereto.
9. To the fullest extent permitted by the Delaware General Corporation Law as it

exists or may be amended, a director of this corporation shall not be liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.

10. To the fullest extent permitted by Section 145 of the Delaware General Corporation Law as it exists or may be amended, or any successor provision, the corporation shall indemnify all persons whom it may indemnify pursuant thereto.


11. No amendment to or repeal of Article 9 or 10 shall apply to or have any effect on the liability or alleged liability or right to indemnification for or with respect to any acts or omissions occurring prior to the amendment or repeal.

12. Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them and/or between this corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this corporation under the provisions of section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this corporation under the provisions of section 279 of Title 8 of the Delaware Code, order a meeting of the creditors or a class of creditors, and/or of the stockholders or a class of stockholders of this corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this corporation as a consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this corporation, as the case may be, and also on this corporation.

13. The corporation reserves the right to amend, alter, change, or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by

statute and the Certificate of Incorporation and all rights conferred upon stockholders herein are granted subject to this reservation.

IN WITNESS WHEREOF, the undersigned, being the incorporator hereinbefore named, has executed, signed, and acknowledged this Certificate of Incorporation this 24th day of March, 2000.

  
Donald R. Adair, Incorporator

*State of Delaware*  
*Office of the Secretary of State*

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PAGE 1

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "AMERICAN FIBER SYSTEMS HOLDING CORP.", FILED IN THIS OFFICE ON THE THIRD DAY OF NOVEMBER, A.D. 2000, AT 9 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE KENT COUNTY RECORDER OF DEEDS.



*Edward J. Freel*  
\_\_\_\_\_  
Edward J. Freel, Secretary of State

331.1740 8100

AUTHENTICATION: 0776567

001555689

DATE: 11-06-00



**CERTIFICATE OF INCORPORATION  
OF  
AMERICAN FIBER SYSTEMS HOLDING CORP.**

**ARTICLE I**

The name of this corporation is American Fiber Systems Holding Corp.

**ARTICLE II**

The address of the registered office of this corporation in the State of Delaware is 15 North Street in the City of Dover, County of Kent. The name of its registered agent at such address is Nationwide Information Services.

**ARTICLE III**

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

**ARTICLE IV**

A. Classes of Stock. This corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares that this corporation is authorized to issue is forty-eight million (48,000,000) shares. Thirty-four million (34,000,000) shares shall be Common Stock and fourteen million (14,000,000) shares shall be Preferred Stock, each with a par value of \$0.0001 per share.

B. Rights, Preferences and Restrictions of Preferred Stock. The Preferred Stock authorized by this Certificate of Incorporation may be issued from time to time in one series. The rights, preferences, privileges, and restrictions granted to and imposed on the Series A Preferred Stock, which series shall consist of 14,000,000 shares (the "Series A Preferred Stock") are set forth below.

1. Dividend. No dividends or other distributions shall be authorized, declared, paid or set apart for payment on any shares of Common Stock or Preferred Stock unless at the same time a dividend is declared or paid upon, or distribution made on, the shares of Series A Preferred Stock equal to the greater of (A) \$.04 per share per annum (as adjusted for any stock splits, stock dividends, recapitalizations or the like) and (B) an amount equal to that paid on any other outstanding shares of this corporation. Dividends shall not be cumulative.

2. Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of this corporation, either voluntary or involuntary, the holders of Series A Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of this corporation to the holders of Common Stock by reason of their ownership thereof,

an amount per share equal to the sum of \$.50 for each outstanding share of Series A Preferred Stock (the "Original Issue Price"), plus declared but unpaid dividends on such shares (subject to adjustment of such fixed dollar amounts for any stock splits, stock dividends, combinations, recapitalizations or the like). If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amount, then the entire assets and funds of this corporation legally available for distribution shall be distributed ratably among the holders of the Series A Preferred Stock in proportion to the full preferential amount to which each such holder would otherwise be entitled pursuant to this subsection (a).

(b) Upon completion of the distribution required by subsection (a) of this Section 2, all of the remaining assets of this corporation available for distribution to stockholders shall be distributed among the holders of Common Stock pro rata based on the number of shares of Common Stock held by each.

(c) (i) Without limiting the generality of this Section 2, any of the following transactions shall be deemed a liquidation, dissolution or winding up of this corporation for purposes of this Section 2: (A) the acquisition of this corporation by another entity by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation) that results in the transfer of fifty percent (50%) or more of the outstanding voting power of this corporation; or (B) a sale of all or substantially all of the assets of this corporation.

(ii) In any of such events, if the consideration received by this corporation is other than cash, its value will be deemed its fair market value. Any securities shall be valued as follows:

(A) Securities not subject to investment letter or other similar restrictions on free marketability covered by (B) below:

(1) If traded on a securities exchange or through the Nasdaq National Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange or system over the thirty (30) calendar day period ending three (3) calendar days prior to the closing;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty (30) day period ending three (3) days prior to the closing; and

(3) If there is no active public market, the value shall be the fair market value thereof, as mutually determined by this corporation and the holders of at least a majority of the voting power of all then outstanding shares of Series A Preferred Stock.

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former

affiliate) shall be to make an appropriate discount from the market value determined as above in (A)(1), (2) or (3) to reflect the approximate fair market value thereof, as mutually determined by this corporation and the holders of at least a majority of the voting power of all then outstanding shares of such Series A Preferred Stock.

(iii) In the event the requirements of this Section 2 are not complied with, this corporation shall forthwith either:

(A) cause the closing of such liquidation, dissolution or winding up to be postponed until such time as the requirements of this Section 2 have been complied with; or

(B) cancel such liquidation, dissolution or winding up, in which event the rights, preferences and privileges of the holders of the Series A Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in subsection 2(c)(iv) hereof.

(iv) This corporation shall give each holder of record of Series A Preferred Stock written notice of such impending transaction not later than twenty (20) days prior to the stockholders' meeting, if any, called to approve such transaction, or twenty (20) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section 2, and this corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than twenty (20) days after this corporation has given the first notice provided for herein or sooner than ten (10) days after this corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of a majority of the outstanding shares of Series A Preferred Stock.

### 3. Redemption.

The Preferred Stock is not redeemable.

4. Conversion. The holders of the Series A Preferred Stock shall have conversion rights as follows (the "Conversion Rights");

(a) Right to Convert. Each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of this corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Original Issue Price by the Conversion Price, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The initial Conversion Price per share for share of Series A Preferred Stock shall be the Original Issue Price; provided, however, that the Conversion Price for the Series A Preferred Stock shall be subject to adjustment as set forth in subsection 4(d).

(b) Automatic Conversion. Each share of Series A Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Price at the time in effect for such Series A Preferred Stock immediately upon the earlier of: (i) this corporation's sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement on Form S-1 or Form SB-2 under the Securities Act of 1933, as amended (the "1933 Act"), the public offering price of which was not less than \$2.50 per share (as adjusted for any stock splits, stock dividends, recapitalizations or the like) and \$25,000,000 in the aggregate, and after which the corporation's Common Stock is traded on a national securities exchange or the Nasdaq National Market (a "Qualified Public Offering"), or (ii) the date specified by written consent or agreement of the holders of a majority of the then outstanding shares of Series A Preferred Stock.

(c) Mechanics of Conversion. Before any holder of Series A Preferred Stock shall be entitled to convert the same into shares of Common Stock, he or she shall surrender the certificate or certificates therefor, duly endorsed, at the office of this corporation or of any transfer agent for the Series A Preferred Stock and shall give written notice to this corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. This corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series A Preferred Stock or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series A Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. If the conversion is in connection with an underwritten offering of securities registered pursuant to the 1933 Act, the conversion may, at the option of any holder tendering Series A Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the persons entitled to receive the Common Stock upon conversion of the Series A Preferred Stock shall not be deemed to have converted such Series A Preferred Stock until immediately prior to the closing of such sale of securities.

(d) Conversion Price Adjustments of Preferred Stock for Certain Dilutive Issuances, Splits and Combinations. The Conversion Price of the Series A Preferred shall be subject to adjustment from time to time as follows:

(i) (A) If this corporation shall issue, after the date upon which any shares of Series A Preferred Stock were first issued (the "Purchase Date"), any Additional Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price in effect immediately prior to the issuance of such Additional Stock, the Conversion Price for such Series A Preferred Stock in effect immediately prior to each such issuance shall forthwith (except as otherwise provided in this clause (i)) be adjusted to a price determined by multiplying

such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (including shares of Common Stock deemed to be issued pursuant to subsection 4(d)(i)(E)(1) or (2)) (but not including shares excluded from the definition of Additional Stock by Section 4(d)(ii)(B)) plus the number of shares of Common Stock that the aggregate consideration received by this corporation for such issuance would purchase at such Conversion Price; and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issuance (including shares of Common Stock deemed to be issued pursuant to subsection 4(d)(i)(E)(1) or (2)) (but not including shares of excluded from the definition of Additional Stock by subsection 4(d)(ii)(B)) plus the number of shares of such Additional Stock.

(B) No adjustment of the Conversion Price for the Series A Preferred Stock shall be made in an amount less than one cent per share, provided that any adjustments that are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three (3) years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three (3) years from the date of the event giving rise to the adjustment being carried forward. Except to the limited extent provided for in subsections 4(d)(i)(E)(3) and 4(d)(i)(E)(4), no adjustment of such Conversion Price pursuant to this subsection 4(d)(i) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(C) In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor.

(D) In the case of the issuance of the Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as mutually determined by the Board of Directors and the holders of at least a majority of the Series A Preferred Stock, irrespective of any accounting treatment.

(E) In the case of the issuance after the Purchase Date of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of this subsection 4(d)(i) and subsection 4(d)(ii):

(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in subsection 4(d)(i)(C) and 4(d)(i)(D)), if any, received by this corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights for the Common Stock covered thereby.

(2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange for, any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by this corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by this corporation upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in subsections 4(d)(i)(C) and 4(d)(i)(D)).

(3) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to this corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof (unless such options or rights or convertible or exchangeable securities were merely deemed to be included in the numerator and denominator for purposes of determining the number of shares of Common Stock outstanding for purposes of subsection 4 (d)(i)(A)), the Conversion Price, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities that remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(5) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to subsections 4 (d)(i)(E)(1) and (2) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either subsection 4(d)(i)(E)(3) or (4).

(ii) "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to subsection 4(d)(i)(E)) by this corporation after the Purchase Date other than:

(A) Common Stock issued pursuant to a transaction described in subsection 4(d)(iii) hereof; or

(B) up to 11,000,000 shares of Common Stock (excluding shares repurchased at cost by this corporation in connection with the termination of service) issuable or issued to employees, consultants, directors or vendors (if in transactions with primarily non-financing purposes) of this corporation directly or pursuant to a stock option plan or restricted stock plan or similar plan approved by the Board of Directors of this corporation.

(iii) In the event this corporation should at any time or from time to time after the Purchase Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision of no record date is fixed), the Conversion Price of the Series A Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents.

(iv) If the number of shares of Common Stock outstanding at any time after the Purchase Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Price for the Series A Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share shall be decreased in proportion to such decrease in outstanding shares.

(e) Other Distributions. In the event this corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by this corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in subsection 4(d)(iii), then, in each such case for the purpose of this subsection 4(e), the holders of the Series A Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of this corporation into which their shares of Series A Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of this corporation entitled to receive such distribution.

(f) Recapitalizations. If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in this Section 4 or Section 2) provision shall be made so that the holders of the Series A Preferred Stock shall thereafter be entitled to receive upon conversion of the Series A Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made



in the application of the provisions of this Section 4 with respect to the rights of the holders of the Series A Preferred Stock after the recapitalization to the end that the provisions of this Section 4 (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of the Series A Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

(g) No Impairment. This corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by this corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Series A Preferred Stock against impairment.

(h) No Fractional Shares and Certificate as to Adjustments.

(i) No fractional shares shall be issued upon the conversion of any share or shares of the Series A Preferred Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share. Whether or not fractional shares are issuable upon such conversion shall be determined on the basis of the total number of shares of Series A Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of the Series A Preferred Stock pursuant to this Section 4, this corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series A Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. This corporation shall, upon the written request at any time of any holder of Series A Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property that at the time would be received upon the conversion of a share of Series A Preferred Stock.

(i) Notices of Record Date. In the event of any taking by this corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, this corporation shall mail to each holder of Series A Preferred Stock, at least ten (10) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.



(j) Reservation of Stock Issuable Upon Conversion. This corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock, in addition to such other remedies as shall be available to the holder of such Preferred Stock, this corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite shareholder approval of any necessary amendment to this Certificate of Incorporation.

(k) Notices. Any notice required by the provisions of this Section 4 to be given to the holders of shares of Series A Preferred Stock, shall be deemed given five days after being deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of this corporation.

5. Voting Rights.

(a) General Voting Rights. The holder of each share of Series A Preferred Stock, shall have the right to one vote for each share of Common Stock into which such Series A Preferred Stock could then be converted, and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the Bylaws of this corporation, and shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Series A Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

(b) Voting for the Election of Directors. As long as any shares of Series A Preferred Stock remain outstanding, the holders of a majority of such shares of Series A Preferred Stock shall be entitled to elect one (1) director of this corporation, voting as a separate class, at each annual election of directors. The holders of a majority of the outstanding capital stock of the Company (including all Common Stock and all Preferred Stock), voting as a single class, shall be entitled to elect the remaining directors of this corporation at each annual election of directors.

In the case of any vacancy (other than a vacancy caused by removal) in the office of a director occurring among the directors elected by the holders of a class or series of stock pursuant to this Section 5(b), the remaining directors so elected by that class or series, if any, may by affirmative vote of a majority thereof (or the remaining director so

elected if there be but one, or if there are no such directors remaining, by the affirmative vote of the holders of a majority of the shares of that class or series), elect a successor or successors to hold office for the unexpired term of the director or directors whose place or places shall be vacant. Any director who shall have been elected by the holders of a class or series of stock or by any directors so elected as provided in the immediately preceding sentence hereof may be removed during the aforesaid term of office, either with or without cause, by, and only by, the affirmative vote of the holders of the shares of the class or series of stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders, and any vacancy thereby created may be filled by the holders of that class or series of stock represented at the meeting or pursuant to unanimous written consent.

6. Protective Provisions. So long as any shares of Series A Preferred Stock are outstanding, this corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Series A Preferred Stock, voting as a separate class:

(a) sell, convey, or otherwise dispose of all or substantially all of its property or business or merge into or consolidate with any other corporation (other than a wholly-owned subsidiary corporation) or effect any transaction or series of related transactions in which more than fifty percent (50%) of the voting power of this corporation is disposed of;

(b) authorize or issue, or obligate itself to issue, any other equity security (including any other security convertible into or exercisable for any equity security) having a preference over, or being on parity with, the Series A Preferred Stock with respect to dividends, liquidation, redemption or voting;

(c) redeem, purchase or otherwise acquire (or pay into or set aside for a sinking fund for such purpose) any share or shares of Preferred Stock or Common Stock; provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for this corporation or any subsidiary pursuant to agreements under which this corporation has the option to repurchase such shares at cost or at cost upon the occurrence of certain events, such as the termination of employment;

(d) alter or change the rights, preferences or privileges of the shares of Series A Preferred Stock so as to adversely affect the shares of Series A Preferred Stock; or

(e) increase or decrease (other than as a result of conversion) the total number of authorized shares of Series A Preferred Stock.

7. Status of Converted Stock. In the event any shares of Series A Preferred Stock are converted pursuant to Section 4 hereof, the shares so converted shall be cancelled and shall not be issuable by this corporation.

C. Common Stock. The rights, preferences, privileges and restrictions granted to and imposed on the Common Stock are as set forth below in this Article IV(C).

1. Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of this corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

2. Liquidation Rights. Upon the liquidation, dissolution or winding up of this corporation, the assets of this corporation shall be distributed as provided in Section 2 of Division (B) of Article IV hereof.

3. Redemption. The Common Stock is not redeemable.

4. Voting Rights. The holder of each share of Common Stock shall have the right to one vote for each such share, and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of this corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

#### ARTICLE V

Except as otherwise provided in this Certificate of Incorporation, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of this corporation.

#### ARTICLE VI

The number of directors of this corporation shall be fixed from time to time by a bylaw or amendment thereof duly adopted by the Board of Directors or by the stockholders.

#### ARTICLE VII

Elections of directors need not be by written ballot unless the Bylaws of this corporation shall so provide.

#### ARTICLE VIII

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of this corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of this corporation.

#### ARTICLE IX

Except as otherwise provided in this Certificate of Incorporation, no person shall be elected a director of the corporation and no director shall be removed as a director, except (a) at a duly called and held meeting of the stockholders entitled to vote in the

election or removal, (b) by written consent signed by all the holders of outstanding stock entitled to vote in the election or removal, or (c) by action of the Board of Directors in accordance with Section 223 of the Delaware General Corporation Law as it exists or may be amended or other applicable law, or any successor thereto.

#### ARTICLE X

A director of this corporation shall, to the fullest extent permitted by the General Corporation Law as it now exists or as it may hereafter be amended, not be personally liable to this corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to this corporation or its stockholders, (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law, or (iv) for any transaction from which the director derived any improper personal benefit. If the General Corporation Law is amended, after approval by the stockholders of this Article, to authorize corporation action further eliminating or limiting the personal liability of directors, then the liability of a director of this corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law, as so amended.

Any amendment, repeal or modification of this Article X, or the adoption of any provision of this Certificate of Incorporation inconsistent with this Article X, by the stockholders of this corporation shall not apply to or adversely affect any right or protection of a director of this corporation existing at the time of such amendment, repeal, modification or adoption.

#### ARTICLE XI

This corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

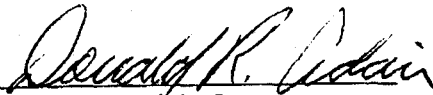
#### ARTICLE XII

To the fullest extent permitted by applicable law, this corporation is authorized to provide indemnification of (and advancement of expenses to) agents of this corporation (and any other persons to which General Corporation Law permits this corporation to provide indemnification) through bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law, subject only to limits created by applicable General Corporation Law (statutory or non-statutory), with respect to actions for breach of duty to this corporation, its stockholders, and others.

Any amendment, repeal or modification of the foregoing provisions of this Article XII shall not adversely affect any right or protection of a director, officer, agent, or other person existing at the time of, or increase the liability of any director of this corporation

with respect to any acts or omissions of such director, officer or agent occurring prior to, such amendment, repeal or modification.

**IN WITNESS WHEREOF**, the undersigned, being the incorporator hereinbefore named, has executed, signed, and acknowledged this Certificate of Incorporation this 30<sup>th</sup> day of November, 2000.

  
Donald R. Adair, Incorporator

STATE OF DELAWARE  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
FILED 09:00 AM 11/03/2000  
001555689 - 3311740

CERTIFICATE OF INCORPORATION  
OF  
AMERICAN FIBER SYSTEMS HOLDING CORP.

ARTICLE I

The name of this corporation is American Fiber Systems Holding Corp.

ARTICLE II

The address of the registered office of this corporation in the State of Delaware is 15 North Street in the City of Dover, County of Kent, Delaware 19901. The name of its registered agent at such address is Nationwide Information Services.

ARTICLE III

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

ARTICLE IV

A. Classes of Stock. This corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares that this corporation is authorized to issue is forty-eight million (48,000,000) shares. Thirty-four million (34,000,000) shares shall be Common Stock and fourteen million (14,000,000) shares shall be Preferred Stock, each with a par value of \$0.0001 per share.

B. Rights, Preferences and Restrictions of Preferred Stock. The Preferred Stock authorized by this Certificate of Incorporation may be issued from time to time in one series. The rights, preferences, privileges, and restrictions granted to and imposed on the Series A Preferred Stock, which series shall consist of 14,000,000 shares (the "Series A Preferred Stock") are set forth below.

1. Dividend. No dividends or other distributions shall be authorized, declared, paid or set apart for payment on any shares of Common Stock or Preferred Stock unless at the same time a dividend is declared or paid upon, or distribution made on, the shares of Series A Preferred Stock equal to the greater of (A) \$.04 per share per annum (as adjusted for any stock splits, stock dividends, recapitalizations or the like) and (B) an amount equal to that paid on any other outstanding shares of this corporation. Dividends shall not be cumulative.

2. Liquidation Preference.

(A) In the event of any liquidation, dissolution or winding up of this corporation, either voluntary or involuntary, the holders of Series A Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of this corporation to the holders of Common Stock by reason of their ownership thereof,

12-04-2000 11:42AM FROM

P. 2

. NOV-30-00 THU 04:24 PM

FAX NO.

P. 02/02

N. Y. S. DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS AND STATE RECORDS

ALBANY, NY 12231-0001

FILING RECEIPT

ENTITY NAME: AMERICAN FIBER SYSTEMS HOLDING CORP.

DOCUMENT TYPE: APPLICATION FOR AUTHORITY (FOREIGN BUS)

COUNTY: MONR

SERVICE COMPANY: NATIONWIDE INFORMATION SERVICES, INC.

SERVICE CODE: 27

FILED: 11/29/2000 DURATION: PERPETUAL CASH#: 001129000285 FILM #: 001129000288

ADDRESS FOR PROCESS

EXIST DATE

THE CORPORATION  
100 MERIDIAN CENTRE, SUITE 250  
ROCHESTER, NY 14618

11/29/2000

REGISTERED AGENT



FILER	FEES	PAYMENTS
	260.00	260.00
	FILING 225.00	CASH 0.00
	TAX 0.00	CHECK 0.00
	CERT 0.00	CHARGE 0.00
	COPIES 10.00	DRAWDOWN 260.00
	HANDLING 25.00	BILLED 0.00
		REFUND 0.00

07C7795

DOS-1025 (11/89)

CARL J. KUNASEK  
CHAIRMAN

JIM IRVIN  
COMMISSIONER

WILLIAM A. MUNDELL  
COMMISSIONER



ARIZONA CORPORATION COMMISSION

BRIAN C. MCNEIL  
EXECUTIVE SECRETARY

JOANNE C. MACDONNELL  
DIRECTOR, CORPORATIONS DIVISION

CT CORPORATION SYSTEM  
3225 N CENTRAL AVE  
PHOENIX, AZ 85012

RE: AMERICAN FIBER SYSTEMS, INC.  
File Number: F-0963671-8

We are pleased to notify you that your Application for Authority to transact business in Arizona was approved and filed on September 22, 2000.

You must publish a copy of your Application for Authority. The publication must be in a newspaper of general circulation in the county of the known place of business in Arizona, for three (3) consecutive publications. An affidavit from the newspaper, evidencing such publication, must be delivered to the Commission for filing WITHIN NINETY (90) DAYS from the File Date.

All corporations transacting business in Arizona are required to file an Annual Report with the Commission, on the anniversary of the date of incorporation. Each year, a preprinted Annual Report Form will be mailed to you prior to the due date of the report.

If you have any questions or need further information, please contact us at (602) 542-3135 in Phoenix, (520) 628-6560 in Tucson, or Toll Free (Arizona residents only) at 1-800-345-5819.

Very truly yours,

THERESA TITTLE  
Examiner  
Corporations Division  
Arizona Corporation Commission

CF:07  
Rev: 4/97



DO NOT PUBLISH  
THIS SECTION

SEP 22 2000 APPLICATION FOR AUTHORITY  
TO TRANSACT BUSINESS

1. The corporate name must contain a corporate ending which may be "corporation," "association," "company," "limited," "incorporated" or an abbreviation of any of these words. If you are the holder or assignee of a tradename or trademark, attach Declaration of Tradename Holder form. If your name is not available for use in Arizona, you must adopt a fictitious name and provide a resolution adopting the name, which must be executed by the corporation Secretary.

3. You must provide the total duration in years for which your corporation was formed to endure. If perpetual succession, so indicate in this section. Do not leave blank, or state not applicable.

5. The statutory agent address cannot be a P.O. Box. It must be a physical address in Arizona. Include City, State and Zip code

FILED BY Jeri Little  
TERM 9/22/2000

IN ARIZONA

F-0963671-8

The name of the corporation is: American Fiber Systems, Inc.  
A(n) Delaware Corporation  
(State, Province or Country)

☒ We are a foreign corporation applying for authority to transact business in the state of Arizona.

☐ We are a foreign corporation currently authorized to transact business in Arizona and must now file this Application for New Authority pursuant to A.R.S. § 10-1504 because we have changed the following in our domicile jurisdiction:

- ☐ Our actual corporate name (or the name under which we originally obtained authority in Arizona).
- ☐ The period of our duration.
- ☐ The state, province or country of our incorporation.

1. The exact name of the foreign corporation is:

American Fiber Systems, Inc.

If the exact name of the foreign corporation is not available for use in this state, then the fictitious name adopted for use by the corporation in Arizona is:

(FN).

2. The name of the state, province or country in which the foreign corporation is incorporated is:

Delaware

3. The foreign corporation was incorporated on the 24 day of March, 2000 and the period of its duration is: perpetual

4. The street address of the principal office of the foreign corporation in the state, province or country of its incorporation is:

1209 Orange Street

Wilmington DE. 19801

5. The name and street address of the statutory agent for the foreign corporation in Arizona is:

CT Corporation System

c/o CT Corporation system, 3225 North Central Avenue,

Phoenix, Arizona 85012

DO NOT PUBLISH  
THIS SECTION

5.b. Indicate to which  
address the Annual  
Report should be mailed.

6. If the purpose of your  
corporation has any  
limitations with regard to  
this section, so indicate.  
If not, state no  
limitations.

Name:

Address:

City, State, Zip:

Name:

Address:

City, State, Zip:

Name:

Address:

City, State, Zip:

8. The total number of  
authorized shares cannot  
be "zero" or "N/A".  
Include authorized, not  
issued shares in this  
section.

5.a. The street address of the known place of business of the foreign corporation in Arizona IF  
DIFFERENT from the street address of the statutory agent is:

No office is located within the state at this time.

5.b. The Annual Report and general correspondence should be mailed to the address specified  
above in section 4 X or 5a \_\_\_\_\_.

6. The purpose of the corporation is to engage in any and all lawful business in which  
corporations may engage in the state, province or country under whose law the foreign  
corporation is incorporated, with the following limitations if any:

None

7. The names and usual business addresses of the current directors and officers of the foreign  
corporation are: (Attach additional sheets if necessary.)

David G. Rusin, President and CEO [title]

100 Meridian Centre, Suite 250

Rochester, New York 14623

Gita Ramachandran, V.P., CFO, Secretary [title]

100 Meridian Centre, Suite 250

Rochester, New York 14623

See Attached Schedule for Vice Presidents [title]

8. The foreign corporation is authorized to issue 48,000,000 shares, itemized as  
follows: (Attach additional sheets if necessary.)

34,000,000 shares of Common [class or series] stock at  
\_\_\_\_\_ no par value or par value of \$ 0.0001 per share.

14,000,000 shares of Pref. Series A [class or series] stock at  
\_\_\_\_\_ no par value or par value of \$ 0.0001 per share.

\_\_\_\_\_ shares of \_\_\_\_\_ [class or series] stock at  
\_\_\_\_\_ no par value or par value of \$ \_\_\_\_\_ per share.

DO NOT PUBLISH  
THIS SECTION

9. The total number of  
issued shares cannot be  
"N/A".

The Application must  
be accompanied by the  
following: A  
Certificate of  
Disclosure, executed  
within 30 days of  
delivery to the  
Commission, by a duly  
authorized officer

Attach a certified copy  
of your articles of  
incorporation, all  
amendments and  
mergers (AZ Const.  
Art. XIV, §8) and a  
certificate of existence  
or document of similar  
import duly  
authenticated (within  
60 days) by the official  
having custody of  
corporate records in  
the state, province or  
country under whose  
laws we are  
incorporated.

The agent may consent  
to the appointment by  
either executing the  
consent, attaching a  
cover letter, or if  
paying by check,  
executing the check.

CF:0024  
Rev. 10/99

9. The foreign corporation has issued 22,400,000 shares, itemized as follows:  
10,000,000 shares of Common [class or series] stock at  
\_\_\_\_\_ no par value or par value of \$ 0.0001 per share.  
12,400,000 shares of Series A Pref [class or series] stock at  
\_\_\_\_\_ no par value or par value of \$ 0.0001 per share.  
\_\_\_\_\_ shares of \_\_\_\_\_ [class or series] stock at  
\_\_\_\_\_ no par value or par value of \$ \_\_\_\_\_ per share.

10. The character of business the foreign corporation initially intends to conduct in Arizona is:  
Deploy Fiber Optic Networks for use by wholesale  
telecommunications carriers and certain business customers.

DATED this 6 day of September, 2000.

American Fiber Systems, Inc.

[Name of Corporation]

Executed by

Gita Ramachandran CFO/Secretary

[print name]

[title]

PHONE \_\_\_\_\_

FAX \_\_\_\_\_

[optional]

[optional]

ACCEPTANCE OF APPOINTMENT BY STATUTORY AGENT

The undersigned hereby acknowledges and accepts the appointment as statutory agent of this corporation  
effective this 8<sup>th</sup> day of September, 2000.

Mary Lou Mulkeen  
Signature

Mary Lou Mulkeen, Asst. Sec.  
[Print Name] CT Corporation System

## Attention Corporate Officers

If you have the responsibility of collecting, accounting for, and paying over payroll taxes withheld from the wages and salaries of corporate employees, read on.

A principal benefit of incorporation is limiting an owner's liability to the amount of his/her capital investment. This limited liability may not apply in all circumstances.

Section 6672 of the Internal Revenue Code States that the liability for taxes withheld from the wages and salaries of corporate employees may be assessed against the corporate officer(s) or employee(s) found to be responsible for their collection and payment. The personal liability of the responsible officer or employee is not limited to the amount of capital investment.

There are other civil and criminal penalties in the law regarding filing, paying, depositing of employment taxes.

*If you would like more information regarding this or any other federal tax*

**NEWSPAPERS ACCEPTABLE FOR PUBLISHING  
CORPORATE & LIMITED LIABILITY COMPANY FILINGS\***

\*Qualifying newspapers must comply with A.R.S. §§ 10-140.34 & 39-201. A and B  
February 3, 2000

**APACHE (1)**

NAVAJO TIMES  
520-871-5400

THE ROUND VALLEY PAPER  
520-333-2033

OBSERVER  
ST JOHNS, AZ 85936  
520-337-4814

OBSERVER  
SPRINGVILLE, AZ 85938  
520-333-5401

**COCHISE (2)**

WHITE MOUNTAIN INDEPENDENT  
(COCHISE EDITION)  
SHOW LOW, AZ 85901  
520-537-5721

SAN PEDRO VALLEY NEWS-SUN  
520-586-3382

ARIZONA RANGE NEWS  
WILLCOX, AZ 85644  
520-384-3571

THE SCOUT (HUACHUCHA) STAR  
SIERRA VISTA, AZ 85603  
520-458-3348

The Scout  
1. The Paper  
2. The Scout  
3. The Desert Airwave  
4. The Bisbee Spirit  
5. Tele Viewing  
(All the above are affiliated with the Scout)

THE DAILY DISPATCH  
DOUGLAS, AZ 85607  
520-364-3424

THE BISBEE OBSERVER  
BISBEE, AZ 85603  
520-432-7254

FIVE STAR PUBLISHING  
MOUNTAIN VIEW NEWS  
SIERRA VISTA, AZ 85636  
520-458-3340

BREWERY GULCH GAZETTE  
BISBEE, AZ 85603  
520-432-2244

SIERRA VISTA DAILY HERALD  
BISBEE DAILY REVIEW  
SIERRA VISTA, AZ 85635  
520-458-9440

**COCHISE (2) CONT**

THE SUNSITER  
PEARCE, AZ 85625  
520-826-3122

TOMBSTONE TUMBLEWEED  
520-457-3008

**COCONINO (3)**

SEDONA RED ROCK NEWS  
520-282-7795

THE ARIZONA DAILY SUN  
FLAGSTAFF, AZ 86002  
520-774-4545

NAVAJO HOPI OBSERVER  
FLAGSTAFF, AZ  
520-526-3881

LAKE POWELL CHRONICLE  
520-645-8888

WILLAIMS-GRAND CANYON NEWS  
520-635-4426

SOUTHERN UTAH NEWS  
KANAB, UTAH 84741  
435-644-2900

**GILA (4)**

THE PAYSON ROUNDUP &  
520-474-5251

ARIZONA SILVER BELT  
GLOBE, AZ 85501  
520-425-7121

THE MOCCASIN  
SAN CARLOS, AZ 85550  
520-425-2287

**GRAHAM (5)**

EASTERN ARIZONA COURIER  
SAFFORD, AZ 85546  
520-425-2287

ARIZONA (TUCSON) DAILY STAR  
520-573-4224

WILD WEST NEWS  
SOLOMON, AZ. 85551  
520-428-0098

**GREENLEE (6)**

THE COPPER ERA  
CLIFTON, AZ 85533  
520-865-4237

EASTERN ARIZONA COURIER  
SAFFORD, AZ 85546  
520-428-2560

**MARICOPA (7)**

ARIZONA BUSINESS GAZETTE  
PHOENIX, AZ 85001  
602-444-7317

ARIZONA CAPITOL TIMES  
PHOENIX, AZ 85007  
602-258-7026

PEORIA TIMES  
GLENDALE, AZ 85301  
623-842-6000

FOOTHILLS SENTINEL  
CAVE CREEK, AZ 85331  
480-488-3436

JEWISH NEWS  
602-870-9470

GLENDALE STAR  
623-842-6000

WICKENBURG SUN  
602-684-5454

WEST VALLEY BUSINESS  
LITCHFIELD PARK, AZ 85340  
623-535-8439

DAILY NEWS SUN  
SUN CITY, AZ 85351  
623-977-8351

TRIBUNE  
MESA, AZ 85210  
480-898-6826

GILA BEND SUN  
602-683-2393

RECORD REPORTER  
PHOENIX, AZ 85004  
602-417-9900

BUCKEYE VALLEY NEWS  
BUCKEYE, AZ 85326  
623-386-4426

FOUNTAIN HILLS TIMES  
FOUNTAIN HILLS, AZ 85268  
480-837-1925

ARIZONA CORPORATION COMMISSION  
CORPORATIONS DIVISION

Phoenix Address: 1300 West Washington  
Phoenix, Arizona 85007-2929

Tucson Address: 400 West Congress  
Tucson, Arizona 85701-1347

PROFIT  
CERTIFICATE OF DISCLOSURE  
A.R.S. §10-202.D

American Fiber Systems, Inc.  
EXACT CORPORATE NAME

A. Has any person serving either by election or appointment as officer, director, trustee, incorporator and persons controlling or holding over 10% of the issued and outstanding common shares or 10% of any other proprietary, beneficial or membership interest in the corporation:—

1. Been convicted of a felony involving a transaction in securities, consumer fraud or antitrust in any state or federal jurisdiction within the seven-year period immediately preceding the execution of this Certificate?
2. Been convicted of a felony, the essential elements of which consisted of fraud, misrepresentation, theft by false pretenses, or restraint of trade or monopoly in any state or federal jurisdiction within the seven-year period immediately preceding the execution of this Certificate?
3. Been or are subject to an injunction, judgment, decree or permanent order of any state or federal court entered within the seven-year period immediately preceding the execution of this Certificate wherein such injunction, judgment, decree or permanent order:
  - (a) Involved the violation of fraud or registration provisions of the securities laws of that jurisdiction?; or
  - (b) Involved the violation of the consumer fraud laws of that jurisdiction?; or
  - (c) Involved the violation of the antitrust or restraint of trade laws of that jurisdiction?

Yes \_\_\_\_\_ No X

B. IF YES, the following information MUST be attached:

1. Full name, prior name(s) and aliases, if used.
2. Full birth name.
3. Present home address.
4. Prior addresses (for immediate preceding 7-year period).
5. Date and location of birth.
6. Social Security number.
7. The nature and description of each conviction or judicial action, date and location, the court and public agency involved and file or cause number of case.

C. Has any person serving as an officer, director, trustee or incorporator of the corporation served in any such capacity or held or controlled over 20% of the issued and outstanding common shares, or 20% of any other proprietary, beneficial or membership interest in any corporation which has been placed in bankruptcy, receivership or had its charter revoked, or administratively or judicially dissolved by any state or jurisdiction?

Yes \_\_\_\_\_ No X

IF YOUR ANSWER TO THE ABOVE QUESTION IS "YES", YOU MUST ATTACH THE FOLLOWING INFORMATION FOR EACH CORPORATION:

1. Name and address of the corporation.
2. Full name (including aliases) and address of each person involved.
3. State(s) in which corporation:
  - (a) Was incorporated. (b) Has transacted business.
4. Dates of corporate operation.
5. Date and case number of Bankruptcy or date of revocation/administrative dissolution.

D. The fiscal year end adopted by the corporation is 12/31.

Under penalties of law, the undersigned incorporator(s)/officer(s) declare(s) that I(we) have examined this Certificate, including any attachments, and to the best of my(our) knowledge and belief it is true, correct and complete, and hereby declare as indicated above. THE SIGNATURE(S) MUST BE DATED WITHIN THIRTY(30) DAYS OF THE DELIVERY DATE.

BY [Signature] BY [Signature]  
PRINT NAME David G. Rusin PRINT NAME Gita Ramachandran  
TITLE Pres./CEO DATE 9/8/00 TITLE CFO/Secretary DATE 9/8/00

DOMESTIC CORPORATIONS: ALL INCORPORATORS MUST SIGN THE INITIAL CERTIFICATE OF DISCLOSURE. If within sixty days, any person becomes an officer, director, trustee or person controlling or holding over 10% of the issued and outstanding shares or 10% of any other proprietary, beneficial, or membership interest in the corporation and the person was not included in this disclosure, the corporation must file an AMENDED certificate signed by at least one duly authorized officer of the corporation.

FOREIGN CORPORATIONS: MUST BE SIGNED BY AT LEAST ONE DULY AUTHORIZED OFFICER OF THE CORPORATION.

CF: 0022 - Business Corporations  
Rev: 2/98

AZ004 - C T System Online



ARIZONA DEPARTMENT OF REVENUE  
LICENSE & REGISTRATION SECTION

1600 WEST MONROE  
PHOENIX, ARIZONA 85007-2650

MUST BE  
DISPLAYED IN A  
CONSPICUOUS PLACE

USE TAX REGISTRATION

-NOT TRANSFERABLE-

THIS CERTIFICATION IS ISSUED TO THE INDIVIDUAL OR BUSINESS LISTED BELOW FOR THE PURPOSE OF REGISTRATION FOR USE TAX IN ACCORDANCE WITH ARS 42-1407. USE TAX IS LEVIED AND IMPOSED ON THE STORAGE, USE OR CONSUMPTION IN THIS STATE OF TANGIBLE PERSONAL PROPERTY.

ISSUED  
TO

AMERICAN FIBER SYS INC  
100 MERIDIAN CENTER STE 250  
ROCHESTER, NY 14623

07-621534-B

ALL communications  
and Reports MUST  
REFER to this  
LICENSE NO.

29 BUSINESS CODE

10/01/00

EFFECTIVE DATE

--- (DBA) AMERICAN FIBER SYS INC  
--- 100 MERIDIAN CENTER STE 250  
ROCHESTER, NY 14623

10/23/00

PRINT DATE

DOR 87026 (1/88)

**EXHIBIT B**

Managerial Qualifications



**MANAGERIAL AND TECHNICAL QUALIFICATIONS OF  
AMERICAN FIBER SYSTEMS, INC**

**AFS has assembled an outstanding and experienced team of industry professionals to achieve its mission of market leadership. The founding executive team has held key technical, marketing and financial positions at leading broadband and communications companies. The following summaries highlight management's extensive background:**

**David G. Rusin, President & CEO**

Mr. Rusin founded AFS in August 1999. Prior to AFS, he was a founder and Chief Marketing Officer with VoiceWeb Corporation, a provider of Voice over Internet Protocol platform technology linking the computer on-line world with the telephone. Prior to VoiceWeb, Mr. Rusin was President of Frontier Communications (now Global Crossing). While at Frontier Communications, he established the first Competitive Local Exchange Carrier in the United States in 1994. Before Frontier, Mr. Rusin was President & CEO for Edicon Systems, an Eastman Kodak subsidiary, which delivered digital imaging network solutions on a multinational basis. Prior to Eastman Kodak, Mr. Rusin held a host of executive positions with Nortel Networks ranging from marketing, product management and technology planning. Mr. Rusin has over 20 years of progressive telecommunications industry experience. Dave is a past author and speaker on various digital network topics in the United States and abroad.

**David M. Baxter, Vice President Operations and Engineering**

Mr. Baxter joined AFS in May 2000. He has over 28 years of Operations and Engineering experience with Citizens Communications. While at Citizens he oversaw the local service network and fiber network deployment in the operating company. Mr. Baxter was the Director of Acquisition Integration at Citizens while increasing their footprint to over 2,000,000 access lines. Prior to overseeing the Acquisition Integration, he developed the strategic planning model for acquisition integration. Mr. Baxter has a diverse executive background in all areas of telecommunications ranging from Regulatory, Planning, Customer Service and Networks.

**David N. Danchak, Vice President Business Development**

Mr. Danchak joined AFS in April 2000. He has more than 30 years of experience in the communications industry. Prior to AFS, Dave was a communications consultant, both wire-line and wireless, for Enterprises, RBOCs, and Consulting Companies. Previous to the consulting activities, he spent three years as VP Sales for Fujitsu focused on delivering platform solutions to the LECs and IXC's. Prior to Fujitsu, Mr. Danchak spent a number of years with a company acquired by Nortel Networks as VP Sales and VP Engineering with product lines in voice, directory, and network database solution sets.

**Robert J. DeRosa, Vice President Marketing**

Mr. DeRosa joined AFS in April 2000. He has over 25 years of marketing experience in growth companies or markets. Prior to AFS, Mr. DeRosa was a marketing consultant serving a wide variety of telecommunications, Internet and Fortune 100 companies. He has held various senior management positions in marketing and public relations with Frontier Communications (now Global Crossing), Saatchi & Saatchi, Rowland and Nortel Networks.

**Kevin Mullaney, Chief Engineer**

Mr. Mullaney joined AFS in May 2000. Mr. Mullaney has over 30 years of technical telecommunications experience. Prior to AFS, Mr. Mullaney was a private consultant designing digital networks for CLECs throughout the Northeast United States. He is formerly the Chief Engineer and design architect for Performance Telecommunications, a leading supplier of digital carrier and optical network solutions for ILEC central offices. Prior to Performance Telecommunications, Mr. Mullaney was Director of Engineering at Nortel Networks with overall design authority for T-Carrier network products and subsystems.

**Gita Ramachandran, Chief Financial Officer**

Gita Ramachandran, a certified public accountant with an MBA, brings two decades of financial experience to AFS. She comes to AFS from Global Crossing in Rochester, where she was Vice President of Corporate Audit. Prior to Global Crossing, Ms. Ramachandran served as VP of Finance for Ralin Medical in Chicago, was Division Controller at Baxter International in Chicago, and has public accounting experience with both Price Waterhouse Coopers in Chicago and Deloitte & Touche in Toronto.

**Jerry Vinette, Director of Sales**

Jerry Vinette has spent virtually his entire career in telecommunications sales, marketing and management. From 1976-93, he served in a variety of senior-management roles in both the U.S. and abroad for the company that invented computerized directory assistance, which later became Nortel Networks. He has also served as Regional VP of sales for Volt Delta Resources. Mr. Vinette's success in sales and sales management is largely attributable to his technical expertise and wide-ranging telecommunications experience.

**EXHIBIT C**

**Financial Qualifications**

11/06/00

**American Fiber Systems, Inc.**  
**Balance Sheet**  
 As of October 31, 2000

	Oct 31, '00
<b>ASSETS</b>	
Current Assets	
Checking/Savings	
1000 · Petty Cash	200
1010 · Chase CD # 2	10,535
1020 · Chase CD #1	50,000
1030 · Chase checking	11,830
1040 · Chase MMA	4,309,254
Total Checking/Savings	4,381,819
Other Current Assets	
1300 · Prepaid Benefits	1,805
Total Other Current Assets	1,805
Total Current Assets	4,383,624
Fixed Assets	
1410 · Computer Hardware	75,222
1420 · Furniture and Fixtures	154,875
1430 · Leasehold Improvements	36,018
1440 · Office Equipment	5,446
1450 · Software	70,766
Total Fixed Assets	342,327
Other Assets	
1500 · Deposits	281,534
Total Other Assets	281,534
<b>TOTAL ASSETS</b>	<b>5,007,486</b>
<b>LIABILITIES &amp; EQUITY</b>	
Liabilities	
Current Liabilities	
Accounts Payable	
2000 · Accounts Payable	134,368
Total Accounts Payable	134,368
Total Current Liabilities	134,368
Total Liabilities	134,368
Equity	
2998 · Capital Stock	6,200,901
Net Income	-1,327,783
Total Equity	4,873,118
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b>5,007,486</b>

11/06/00

## American Fiber Systems, Inc.

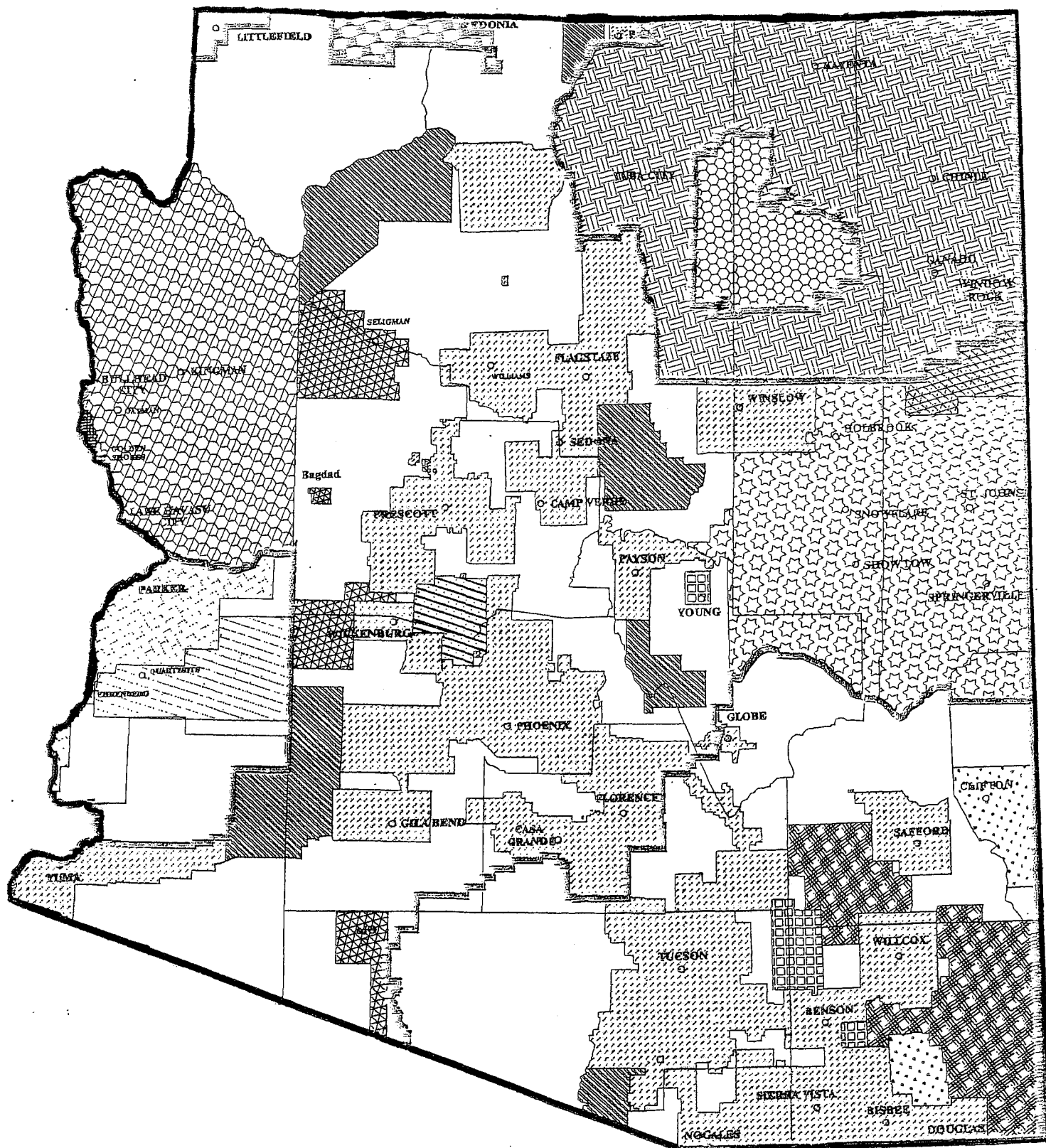
**Profit & Loss**

October 2000

	<u>Oct '00</u>	<u>Jan - Oct '...</u>
<b>Ordinary Income/Expense</b>		
<b>Expense</b>		
5000 · Feasibility Studies	4,696	264,648
6150 · Depreciation Expense	8,466	28,336
6200 · Interest Expense	7,068	7,457
6231 · Marketing Expense	58,868	157,593
6240 · Miscellaneous	17,571	63,018
6241 · Office Supplies	6,729	37,242
6270 · Professional Fees	56,999	139,811
6281 · Consulting	5,169	35,177
6290 · Rent	8,651	49,897
6400 · Salaries and Wages	96,340	465,575
6501 · Outside Sales Commissi...	20,000	60,000
6503 · Travel & Meals	24,037	113,232
<b>Total Expense</b>	<u>314,595</u>	<u>1,421,985</u>
<b>Net Ordinary Income</b>	-314,595	-1,421,985
<b>Other Income/Expense</b>		
<b>Other Income</b>		
7010 · Interest Income	14,704	94,202
<b>Total Other Income</b>	<u>14,704</u>	<u>94,202</u>
<b>Net Other Income</b>	<u>14,704</u>	<u>94,202</u>
<b>Net Income</b>	<u><u>-299,892</u></u>	<u><u>-1,327,783</u></u>

**EXHIBIT D**

Initial Service Area Map



**EXHIBIT E**

Proposed Tariff



REGULATIONS AND SCHEDULE OF INTRASTATE CHARGES  
GOVERNING THE PROVISION OF DEDICATED SERVICES  
FOR CONNECTION TO PUBLIC AND PRIVATE  
COMMUNICATIONS FACILITIES WITHIN  
THE STATE OF ARIZONA

This tariff applies to the Dedicated Access Services furnished by American Fiber Systems, Inc. between one or more points in the State of Arizona. This tariff is on file with the Arizona Corporation Commission, and copies may be inspected, during normal business hours, at the Company's principal place of business, 100 Meridian Centre, Suite 250, Rochester, NY 14618.

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Issued:

Issued By: Gita Ramachandran, Chief Financial Officer  
100 Meridian Centre, Suite 250  
Rochester, NY 14618

Effective:

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CHECK SHEET

The pages of this tariff are effective as of the date shown. The original and revised sheets named below contain all changes from the original tariff and are in effect on the date shown.

<u>Page</u>	<u>Revision</u>	<u>Page</u>	<u>Revision</u>
Title	Original	29	Original
1	Original	30	Original
2	Original	31	Original
3	Original	32	Original
4	Original	33	Original
5	Original	34	Original
6	Original	35	Original
7	Original	36	Original
8	Original	37	Original
9	Original	38	Original
10	Original	39	Original
11	Original	40	Original
12	Original	41	Original
13	Original	42	Original
14	Original	43	Original
15	Original	44	Original
16	Original	45	Original
17	Original	46	Original
18	Original	47	Original
19	Original	48	Original
20	Original	49	Original
21	Original	50	Original
22	Original	51	Original
23	Original		
24	Original		
25	Original		
26	Original		
27	Original		
28	Original		

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100 Meridian Centre, Suite 250  
Rochester, NY 14618

Effective:

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SECTION 2 - DEFINITIONS	4
SECTION 3 - APPLICATION OF TARIFF	7
SECTION 4 - REGULATIONS	8
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Rochester, NY 14618

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SECTION1 - EXPLANATION OF SYMBOLS, REFERENCE MARKS, AND  
ABBREVIATIONS OF TECHNICAL TERMS USED IN THIS TARIFF

The following symbols shall be used in this Tariff for the purpose indicated below:

- C - To signify changed regulation.
- D - To signify discontinued rate or regulation.
- I - To signify increased rate.
- M - To signify a move in the location of text.
- N - To signify new rate or regulation.
- R - To signify reduced rate.
- S - To signify reissued matter.
- T - To signify a change in text but no change in rate or regulation.

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Rochester, NY 14618

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**SECTION 2 - DEFINITIONS**

Certain terms used generally throughout this tariff are described below.

Advance Payment

Part or all of a payment required before the start of service.

Access Services

The Company's interstate telephone services offered pursuant to this tariff.

Authorized User

A person, firm or corporation which is authorized by the customer or joint user to be connected to the service of the customer or joint user, respectively.

Commission

The Arizona Corporation Commission.

Company or AFS

The term "Company" denotes American Fiber Systems, Inc..

Customer

The person, firm or corporation which orders service and is responsible for the payment of charges and compliance with the Company's regulations.

Dedicated or Private Line

A facility or equipment system or subsystem set aside for the sole use of a specific customer.

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**SECTION 2 - DEFINITIONS (Cont'd)**

**End User or User**

Any person or entity that obtains the Company's services provided under this Tariff, regardless of whether such person or entity is so authorized by the Customer.

**ICB or Individual Case Basis**

A service arrangement in which the regulation, rates and charges are developed based on the specific circumstances of the case.

**LATA**

A Local Access and Transport Area established pursuant to the Modification of Final Judgment entered by the United States District Court for the District of Columbia in Civil Action No. 82-0192; or any other geographic area designated as a LATA in the NATIONAL EXCHANGE CARRIER ASSOCIATION, Inc. Tariff F.C.C. No. 4.

**Network**

Refers to the Company's facilities, equipment, and services provided under this Tariff.

**On-net**

Telecommunications services which are transported exclusively over facilities installed by the Company rather than the facilities of another carrier.

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**SECTION 2 - DEFINITIONS (Cont'd)**

**Service Commencement Date**

The first date on which the Company notifies the Customer that the requested service or facility is available for use, unless extended by the Customer's refusal to accept service which does not conform to standards set forth in the Service Order or this tariff, in which case the Service Commencement Date is the date of the Customer's acceptance. The Company and the Customer may mutually agree on a substitute Service Commencement Date. If the Company does not have an executed Service Order from a Customer, the Service Commencement Date will be the first date on which the service or facility was used by a Customer.

**Service Order**

The written request for dedicated services executed by the Customer and the Company in the format devised by the Company. The signing of a Service Order by the Customer and acceptance by the Company initiates the respective obligations of the parties as set forth therein and pursuant to this tariff, but the duration of the service is calculated from the Service Commencement Date. Should a Customer use the Company's dedicated service without an executed Service Order, the Company will then request the Customer to submit a Service Order.

**Shared**

A facility or equipment system or subsystem that can be used simultaneously by several Customers.

**SONET or Synchronous Optical NETWORK**

A family of fiber-optic transmission rates from 51.84 Mbps to 13.22 Gbps. SONET is an optical interface standard that allows internetworking of transmission products from multiple vendors.

**User**

A customer, joint user, or any other person authorized by a customer to use service provided under this tariff.

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Rochester, NY 14618

Effective:

**SECTION 3 - APPLICATION OF TARIFF**

**3.1 This Tariff applies to intrastate private line service supplied to Customers.**

**This Tariff applies only to the extent that services provided hereunder are used by a Customer for the purpose of originating or terminating intrastate communications. A communication is "intrastate" only if all points of origination and termination are located within the State of Arizona.**

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100 Meridian Centre, Suite 250  
Rochester, NY 14618**

**Effective:**



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## SECTION 4 - REGULATIONS

### 4.1 Undertaking of the Company

#### 4.1.1. Scope

The Company undertakes to furnish dedicated services in accordance with the terms and conditions set forth in this Tariff.

#### 4.1.2 Shortage of Facilities

All service is subject to the availability of suitable facilities. The Company reserves the right to limit the length of communications or to discontinue furnishing services when necessary because of the lack of transmission medium capacity or because of any causes beyond its control.

#### 4.1.3 Terms and Conditions

- A) Service is provided on the basis of a minimum period of at least one month, 24-hours per day. For the purpose of computing charges in this Tariff, a month is considered to have 30 days.
- B) Customers may be required to enter into written Service Orders which shall contain or reference a specific description of the service ordered, the rates to be charged, the duration of the services, and the terms and conditions in this Tariff. Customers will also be required to execute any other documents as may be reasonably requested by the Company.
- C) In any action between the parties to enforce any provision of this Tariff, the prevailing party shall be entitled to recover its legal fees and court costs from the non-prevailing party in addition to other relief a court may award.

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**SECTION 4 - REGULATIONS (Cont'd)**

**4.1 Undertaking of the Company (Cont'd)**

**4.1.3 Terms and Conditions (Cont'd)**

- D) This Tariff shall be interpreted and governed by the laws of the State of Arizona regardless of its choice of laws provision.

**4.1.4 Limitations on Liability**

- A) Except as otherwise stated in this section, the liability of the Company for damages arising out of either: ( 1 ) the furnishing of its services, including but not limited to mistakes, omissions, interruptions, delays, or errors, or other defects, misrepresentations, or use of these services or (2) the failure to furnish its service, whether caused by acts or omission, shall be limited to the extension of allowances to the Customer for interruptions in service as set forth in this Tariff.
- B) Except for the extension of allowances to the Customer for interruptions in service as set forth in this Tariff, the Company shall not be liable to a Customer or third party for any direct, indirect, special, incidental, reliance, consequential, exemplary or punitive damages, including, but not limited to, loss of revenue or profits, for any reason whatsoever, including, but not limited to, any act or omission, failure to perform, delay, interruption, failure to provide any service or any failure in or breakdown of facilities associated with the service.

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Rochester, NY 14618

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SECTION 4 - REGULATIONS (Cont'd)

4.1 Undertaking of the Company (Cont'd)

4.1.4 Limitations on Liability (Cont'd)

- C) The liability of the Company for errors in billing that result in overpayment by the Customer shall be limited to a credit equal to the dollar amount erroneously billed or, in the event that payment has been made and service has been discontinued, to a refund of the amount erroneously billed.
- D) The Company shall not be liable for any claims for loss or damages involving:
  - 1) Any act or omission of: (a) the Customer, (b) any other entity furnishing service, equipment or facilities for use in conjunction with services or facilities provided by the Company; or (c) common carriers or warehousemen;
  - 2) Any delay or failure of performance or equipment due to causes beyond the Company's control, including but not limited to, acts of God, fires, floods, earthquakes, hurricanes, or other catastrophes; national emergencies, insurrections, riots, wars or other civil commotions; strikes, lockouts, work stoppages or other labor difficulties; criminal actions taken against the Company; unavailability, failure or malfunction of equipment or facilities provided by the Customer or third parties; and any law, order, regulation or other action of any governing authority or agency thereof;

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100 Meridian Centre, Suite 250  
Rochester, NY 14618

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SECTION 4 - REGULATIONS (Cont'd)

4.1 Undertaking of the Company (Cont'd)

4.1.4 Limitations on Liability (Cont'd)

D) (Cont'd)

- 3) Any unlawful or unauthorized use of the Company's facilities and services;
- 4) Libel, slander, invasion of privacy or infringement of patents, trade secrets, or copyrights arising from or in connection with the transmission of communications by means of Company-provided facilities or services; or by means of the combination of Company-provided facilities or services with Customer-provided facilities or services;
- 5) Breach in the privacy or security of communications transmitted over the Company's facilities;
- 6) Changes in any of the facilities, operations or procedures of the Company that render any equipment, facilities or services provided by the Customer obsolete, or require modification or alteration of such equipment, facilities or services, or otherwise affect their use or performance, except where reasonable notice is required by the Company and is not provided to the Customer, in which event the Company's liability is limited as set forth in this Tariff.
- 7) Defacement of or damage to Customer premises resulting from the furnishing of services or equipment on such premises or the installation or removal thereof;

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SECTION 4 - REGULATIONS (Cont'd)

4.1 Undertaking of the Company (Cont'd)

4.1.4 Limitations on Liability (Cont'd)

D) (Cont'd)

- 8) Injury to property or injury or death to persons, including claims for payments made under Workers' Compensation law or under any plan for employee disability or death benefits, arising out of, or caused by, any act or omission of the Customer, or the construction, installation, maintenance, presence, use or removal of the Customer's facilities or equipment connected, or to be connected to the Company's facilities;
- 9) Any intentional, wrongful act of a Company employee when such act is not within the scope of the employee's responsibilities for the Company and/or is not authorized by the Company;
- 10) Any representations made by Company employees that do not comport, or that are inconsistent, with the provisions of this Tariff;
- 11) Any noncompletion of calls due to network busy conditions;
- 12) Any calls not actually attempted to be completed during any period that service is unavailable.

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**SECTION 4 - REGULATIONS (Cont'd)**

**4.1 Undertaking of the Company (Cont'd)**

**4.1.4 Limitations on Liability (Cont'd)**

- E) The Company shall be indemnified, defended and held harmless by the Customer or end user from and against any and all claims, loss, demands, suits, expense, or other action or any liability whatsoever, including attorney fees, whether suffered, made, instituted, or asserted by the Customer or by any other party, for any personal injury to or death of any person or persons, and for any loss, damage or destruction of any property, including environmental contamination, whether owned by the Customer or by any other party, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, presence, condition, location, use or removal of any Company or Customer equipment or facilities or service provided by the Company.
  
- F) The Company does not guarantee nor make any warranty with respect to installations provided by it for use in an explosive atmosphere. The Company shall be indemnified, defended and held harmless by the Customer from and against any and all claims, loss, demands, suits, or other action, or any liability whatsoever, including attorney fees, whether suffered, made, instituted or asserted by the Customer or by any other party, for any personal injury to or death of any person or persons, and for any loss, damage or destruction of any property, including environmental contamination, whether owned by the Customer or by any other party, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, presence, condition, location, use or removal of any equipment or facilities or the service.

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**SECTION 4 - REGULATIONS (Cont'd)**

**4.1 Undertaking of the Company (Cont'd)**

**4.1.4 Limitations on Liability (Cont'd)**

- G) The Company assumes no responsibility for the availability or performance of any cable or satellite systems or related facilities under the control of other entities, or for other facilities provided by other entities used for service to the Customer, even if the Company has acted as the Customer's agent in arranging for such facilities or services. Such facilities are provided subject to such degree of protection or nonpreemptibility as may be provided by the other entities.
- H) Except as otherwise stated in this Tariff, any claim of whatever nature against the Company shall be deemed conclusively to have been waived unless presented in writing to the Company within thirty (30) days after the date of the occurrence that gave rise to the claim.
- I) THE COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN.

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**SECTION 4 - REGULATIONS (Cont'd)****4.1 Undertaking of the Company (Cont'd)****4.1.5 Testing and Adjusting**

Upon suitable notice, the Company may make such tests, adjustments, and inspections as may be necessary to maintain the Company's facilities in satisfactory operating condition. No interruption allowance will be credited to the customer for the period during which the Company makes such tests, adjustments, or inspections.

**4.1.6 Provision of Equipment and Facilities**

- A) Except as otherwise indicated, customer-provided station equipment at the Customer's premises for use in conjunction with this service shall be so constructed, maintained and operated as to work satisfactorily with the facilities of the Company.
- B) The Company shall not be responsible for the installation, operation or maintenance of any Customer-provided communications equipment. Where such equipment is connected to service furnished pursuant to this Tariff, the responsibility of the Company shall be limited to the furnishing of services under this Tariff and to the maintenance and operation of such services in the proper manner. Subject to this responsibility, the Company shall not be responsible for:
  - 1) the through transmission of signals generated by Customer-provided equipment or for the quality of, or defects in, such transmission; or
  - 2) the reception of signals by Customer-provided equipment; or

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SECTION 4 - REGULATIONS (Cont'd)

4.1 Undertaking of the Company (Cont'd)

4.1.6 Provision of Equipment and Facilities (Cont'd)

B) (Cont'd)

- 3) network control signaling where such signaling is performed by Customer-provided network control signaling equipment.

4.1.7 Special Construction

Subject to the arrangement of the Company and to all of the regulations contained in this Tariff, special construction of facilities may be undertaken on a reasonable efforts basis at the request of the customer. Special construction is that construction undertaken:

- (A) where facilities are not presently available, and there is no other requirement for the facilities so constructed;
- (B) of a type other than that which the Company would normally utilize in the furnishing of its services;
- (C) over a route other than that which the Company would normally utilize in the furnishing of its services;
- (D) in a quantity greater than that which the Company would normally construct;
- (E) on an expedited basis;

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SECTION 4 - REGULATIONS (Cont'd)

4.1 Undertaking of the Company (Cont'd)

4.1.7 Special Construction

- (F) on a temporary basis until permanent facilities are available;
- (G) involving abnormal costs; or
- (H) in advance of its normal construction.

Special construction charges will be determined as described herein.

4.1.8 Ownership of Facilities

Title to all facilities provided in accordance with this Tariff remains in the Company, its agents, contractors or suppliers.

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**SECTION 4 - REGULATIONS (Cont'd)**

**4.2 Prohibited Uses**

- A) The services the Company offers shall not be used for any unlawful purpose or for any use for which the Customer has not obtained all required governmental approvals, authorizations, licenses, consents and permits.
- B) The Company may require applicants for service who intend to use the Company's offering for resale and/or for shared use to file a letter with the Company confirming that their use of the Company's offering complies with relevant laws and regulations, policies, orders, and decisions.
- C) The Company may require a Customer to immediately shut down its transmission if such transmission is causing interference to others.
- D) A Customer, joint user, or authorized user may not assign, or transfer in any manner, the service or any rights associated with the service without the written consent of the Company. The Company will permit a Customer to transfer its existing service to another entity if the existing Customer has paid all charges owed to the Company for regulated Access Services. Such a transfer will be treated as a disconnection of existing service and installation of new service, and non-recurring installation charges as stated in this Tariff will apply.

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**SECTION 4 - REGULATIONS (Cont'd)**

**4.3 Obligations of the Customer**

**4.3.1 Customer Premises Provisions**

- A) The Customer shall provide the personnel, power and space required to operate all facilities and associated equipment installed on the premises of the Customer.
- B) The Customer shall be responsible for providing Company personnel access to premises of the Customer at any reasonable hour for the purpose of testing the facilities or equipment of the Company.

**4.3.2 Liability of the Customer**

- A) The Customer will be liable for damages to the facilities of the Company and for all incidental and consequential damages caused by the negligent or intentional acts or omissions of the Customer, its officers, employees, agents, invitees, or contractors where such acts or omissions are not the direct result of the Company's negligence or intentional misconduct.
- B) To the extent caused by any negligent or intentional act of the Customer as described in (A), preceding, the Customer shall indemnify, defend and hold harmless the Company from and against all claims, actions, damages, liabilities, costs and expenses, including reasonable attorneys' fees, for (1) any loss, destruction or damage to property of any third party, (2) the death of or injury to persons, including, but not limited to, employees or invitees of either party, and (3) any liability incurred by the Company to any third party pursuant to this or any other Tariff of the Company, or otherwise, for any interruption of, interference to, or other defect in any service provided by the Company to such third party.

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SECTION 4 - REGULATIONS (Cont'd)

4.3 Obligations of the Customer (Cont'd)

4.3.2 Liability of the Customer (Cont'd)

- C) The Customer shall not assert any claim against any other customer or user of the Company's services for damages resulting in whole or in part from or arising in connection with the furnishing of service under this Tariff including but not limited to mistakes, omissions, interruptions, delays, errors or other defects or misrepresentations, whether or not such other customer or user contributed in any way to the occurrence of the damages, unless such damages were caused solely by the negligent or intentional act or omission of the other customer or user and not by any act or omission of the Company. Nothing in this Tariff is intended either to limit or to expand Customer's right to assert any claims against third parties for damages of any nature other than those described in the preceding sentence.

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SECTION 4 - REGULATIONS (Cont'd)

4.4 Customer Equipment and Channels

4.4.1 Interconnection of Facilities

- A) In order to protect the Company's facilities and personnel and the services furnished to other Customers by the Company from potentially harmful effects, the signals applied to the Company's service shall be such as not to cause damage to the facilities of the Company. Any special interface equipment necessary to achieve the compatibility between facilities of the Company and the channels or facilities of others shall be provided at the Customer's expense.

4.4.2 Inspections

- A) The Company may, upon notification to the Customer, at a reasonable time, make such tests and inspections as may be necessary to determine that the requirements regarding the equipment and interconnections are being complied with in respect to the installation, operation and maintenance of Customer-provided equipment and in the wiring of the connection of Customer channels to Company-owned facilities.

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SECTION 4 - REGULATIONS (Cont'd)

4.4 Customer Equipment and Channels (Cont'd)

4.4.2 Inspections (Cont'd)

- B) If the protective requirements in connections with Customer provided equipment are not being complied with, the Company may take such action as necessary to protect its facilities and personnel and will promptly notify the Customer by registered mail in writing of the need for protective action. In the event that the Customer fails to advise the Company within 10 days after such notice is received or within the time specified in the notice that corrective action has been taken, the Company may take whatever additional action is deemed necessary, including canceling service, to protect its facilities and personnel from harm. The Company will upon request 24 hours in advance provide Customer with a statement of technical parameters that the Customer's equipment must meet.

4.4.3 Station Equipment

- A) Customer-provided terminal equipment on the premises of the Customer or other authorized user, the operating personnel there, and the electric power consumed by such equipment shall be provided by and maintained at the expense of the Customer, authorized user, or joint user.

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SECTION 4 - REGULATIONS (Cont'd)

4.4 Customer Equipment and Channels (Cont'd)

4.4.3 Station Equipment (Cont'd)

- B) The Customer or other authorized user is responsible for ensuring that Customer-provided equipment connected to Company equipment and facilities is compatible with such equipment and facilities. The magnitude and character of the voltages and currents impressed on Company-provided equipment and wiring by the connection, operation, or maintenance of such equipment and wiring shall be such as not to cause damage to the Company-provided equipment and wiring or injury to the Company's employees or to other persons. Any additional protective equipment required to prevent such damage or injury shall be provided by the Company at the customer's expense.

4.4.4 Interconnection Provisions

Facilities furnished under this Tariff may be connected to Customer-provided terminal equipment in accordance with the provisions of this Tariff.

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**SECTION 4 - REGULATIONS (Cont'd)****4.5 Customer Deposits and Advance Payments****4.5.1 Advance Payments**

To safeguard its interests, the Company may require a Customer to make an Advance Payment before services and facilities are furnished. The Advance Payment will not exceed an amount up to two months of estimated monthly usage charges. In addition, where special construction is involved, the Advance Payment may also include an amount equal to the estimated non-recurring charges for the special construction and recurring charges (if any) for a period to be set between the Company and the Customer. The Advance Payment will be credited to the Customer's initial bill. An advance payment may be required in addition to a deposit.

**4.5.2 Deposits**

- A) To safeguard its interests, the Company may require the Customer to make a deposit to be held as a guarantee for the payment of charges. A deposit does not relieve the Customer of the responsibility for the prompt payment of bills on presentation. The deposit will not exceed an amount equal to:
- 1) two months' charges for a service or facility which has a minimum payment period of one month; or
  - 2) the charges that would apply for the minimum payment period for a service or facility which has a minimum payment period of more than one month; except that the deposit may include an additional amount in the event that a termination charge is applicable.

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SECTION 4 - REGULATIONS (Cont'd)

4.5 Customer Deposits and Advance Payments (Cont'd)

4.5.2 Deposits (Cont'd)

- B) A deposit may be required in addition to an Advance Payment.
- C) When a service or facility is discontinued, the amount of a deposit, if any, will be applied to the Customer's account and any credit balance remaining will be refunded. Before the service or facility is discontinued, the Company may, at its option, return the deposit or credit it to the Customer's account. If the amount of the deposit is insufficient to cover the balance due to the Customer's account, the Company retains the right to collect any amounts owing after the deposit has been applied plus any costs related to the collection of any remaining balance.
- D) Deposits held will accrue interest at a rate specified by the Company, as approved by the Commission, without deductions for any taxes on such deposits. Interest will not accrue on any deposit after the date on which reasonable effort has been made to return it to the Customer.
- E) If, after twelve (12) months, the customer has not been delinquent in the payment of utility bills, the Company shall refund the deposit and accrued interest in a manner approved by the Commission.

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SECTION 4 - REGULATIONS (Cont'd)

4.6 Payment Arrangements

4.6.1 Payment for Service

The Customer is responsible for the payment of all charges for facilities and services furnished by the Company to the Customer.

A) Taxes

The Customer is responsible for payment of any sales, use, gross receipts, excise, access or other local, state and federal taxes, charges or surcharges (however, designated) (excluding taxes on the Company's net income) imposed on or based upon the provision, sale or use of Network Services.

4.6.2 Billing and Collection of Charges

The Customer is responsible for payment of all charges incurred by the Customer or other users for services and facilities furnished to the Customer by the Company.

- A) Non-recurring charges are due and payable within 30 days after the listed date of the invoice. The listed date of the invoice shall be considered the mailing date.
- B) The Company shall present invoices for Recurring Charges monthly to the Customer, in advance of the month in which service is provided, and Recurring Charges shall be due and payable within 30 days after the date of the invoice. When billing is based upon Customer usage, usage charges will be billed monthly for the preceding billing period.

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SECTION 4 - REGULATIONS (Cont'd)

4.6 Payment Arrangements (Cont'd)

4.6.2 Billing and Collection of Charges (Cont'd)

- C) When service does not begin on the first day of the month, or end on the last day of the month, the charge for the fraction of the month in which service was furnished will be calculated on a pro rata basis. For this purpose, every month is considered to have 30 days.
- D) Billing of the Customer by the Company will begin on the Service Commencement Date, which is the day on which the Company notifies the Customer that the service or facility is available for use, except that the Service Commencement Date may be postponed by mutual agreement of the parties, or if the service or facility does not conform to standards set forth in this Tariff or the Service Order. Billing accrues through and includes the day that the service, circuit, arrangement or component is discontinued.

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**SECTION 4 - REGULATIONS (Cont'd)****4.6 Payment Arrangements (Cont'd)****4.6.2 Billing and Collection of Charges (Cont'd)**

- E) If any portion of the payment is received by the Company after the date due, or if any portion of the payment is received by the Company in funds which are not immediately available upon presentment, then a late payment penalty shall be due to the Company. The late payment penalty shall be the portion of the payment not received by the date due, multiplied by a late factor. The late factor shall be the lesser of:
  - 1) a rate of 1.5 percent per month; or
  - 2) the highest interest rate which may be applied under state law for commercial transactions.
- E) The Customer will be assessed a charge of twenty-five dollars (\$25.00) for each check submitted by the Customer to the Company which a financial institution refuses to honor.
- F) If service is disconnected by the Company in accordance with Section 4.6.4 following and later reinstalled, service will be subject to all applicable installation charges. If service is suspended by the Company and later restored, service will be subject to all applicable restoration charges.
- G) Bills for telephone services may be considered delinquent fifteen (15) days after the date the bill is rendered. Delinquent accounts for which payment has not been received may be terminated twenty-two (22) days after the date the bill is rendered.
- H) All payments shall be made at or mailed to the office of the utility or to the utility's authorized representative.

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**SECTION 4 - REGULATIONS (Cont'd)****4.6 Payment Arrangements (Cont'd)****4.6.3 Billing Disputes****A) General**

All bills are presumed accurate, and shall be binding on the Customer unless notice of the disputed charge(s) is received by the Company within 90 days (commencing 5 days after such bills have been mailed or otherwise rendered per the Company's normal course of business). For the purposes of this section, "notice" is defined as written notice to the Company, containing sufficient documentation to investigate the dispute, including the account number under which the bill has been rendered, the date of the bill, and the specific items on the bill being disputed.

**B) Late Payment Charge**

- 1) The undisputed portions of the bill must be paid by the payment due date to avoid assessment of a late payment charge on the undisputed amount as provided in this Tariff.
- 2) In the event that a billing dispute is resolved by the Company in favor of the Customer, any disputed amount withheld pending resolution of the billing dispute shall not be subject to the late payment charge.
- 3) In the event that a billing dispute is resolved in favor of the Company, the Customer shall pay the late payment charge.

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SECTION 4 - REGULATIONS (Cont'd)

4.6 Payment Arrangements (Cont'd)

4.6.3 Billing Disputes (Cont'd)

C) Adjustments or Refunds to the Customer

- 1) In the event that the Company resolves the billing dispute in favor of a Customer who has withheld payment of the disputed amount pending resolution of the disputed bill, the Company will credit the Customer's account for the disputed amount in the billing period following the resolution of the dispute.
- 2) In the event that the Company resolves the billing dispute in favor of a Customer who has paid the total amount of the disputed bill, the Company will credit the Customer's account for any overpayment by the Customer in the billing period following the resolution of the dispute.
- 3) In the event that the Company resolves the billing dispute in favor of a Customer who has paid the total amount of the disputed bill but canceled the service, the Company will issue a refund of any overpayment by the Customer.
- 4) All adjustments or refunds provided by the Company to the Customer at the Customer's request, or provided by the Company to the Customer by way of compromise of a billing dispute, and which are accepted by the Customer, are final and constitute full satisfaction, settlement, and/or compromise of all of the Customer's claims for the billing period for which the adjustment or refund was issued.

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SECTION 4 - REGULATIONS (Cont'd)

4.6 Payment Arrangements (Cont'd)

4.6.3 Billing Disputes (Cont'd)

D) Unresolved Billing Disputes

In the case of a billing dispute between the Customer and the Company for service furnished to the Customer, which cannot be settled to the mutual satisfaction of the Customer and the Company, the Customer has up to 90 days (commencing 5 days after such bills have been mailed or otherwise rendered per the Company's normal course of business) to take the following course of action.

- 1) First, the Customer may request and the Company will provide an in-depth review of the disputed amount.
- 2) Second, if after investigation and review by the Company, a disagreement remains as to the disputed amount, the Customer may file an appropriate complaint with:

**Arizona Corporation Commission  
Utilities Division  
1200 W. Washington Street  
Phoenix, AZ 85007  
(602) 542 - 4251**

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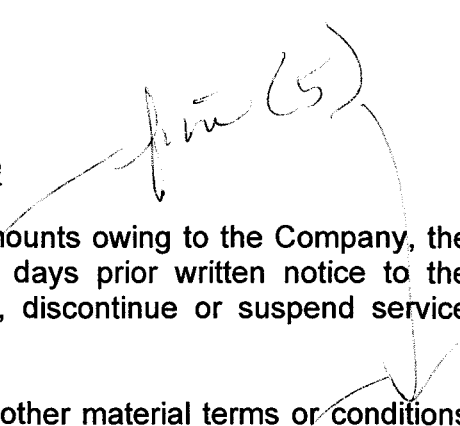


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SECTION 4 - REGULATIONS (Cont'd)

4.6 Payment Arrangements (Cont'd)

4.6.4 Discontinuance of Service for Cause

- 
- A) Upon nonpayment of any amounts owing to the Company, the Company may, by giving 5 days prior written notice to the Customer and the Authority, discontinue or suspend service without incurring any liability.
  - B) Upon violation of any of the other material terms or conditions for furnishing service the Company may, by giving 5 days prior notice in writing to the Customer and the Authority, discontinue or suspend service without incurring any liability if such violation continues during that period.
  - C) Upon condemnation of any material portion of the facilities used by the Company to provide service to a Customer or if a casualty renders all or any material portion of such facilities inoperable beyond feasible repair, the Company, by notice to the Customer, may discontinue or suspend service without incurring any liability.
  - D) Upon the Customer's insolvency, assignment for the benefit of creditors, filing for bankruptcy or reorganization, or failing to discharge an involuntary petition within the time permitted by law, the Company may immediately discontinue or suspend service without incurring any liability.
  - E) Upon any governmental prohibition or required alteration of the services to be provided or any violation of an applicable law or regulation, the Company may immediately discontinue service without incurring any liability.

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SECTION 4 - REGULATIONS (Cont'd)

4.6 Payment Arrangements (Cont'd)

4.6.4 Discontinuance of Service for Cause (Cont'd)

- F) In the event of fraudulent use of the Company's Network, the Company may without notice suspend or discontinue service. The Customer will be liable for all related costs. The Customer will also be responsible for payment of any reconnection charges.
- G) Upon the Company's discontinuance of service to the Customer under this section, the Company, in addition to all other remedies that may be available to the Company at law or in equity or under any other provision of this Tariff, may declare all future monthly and other charges which would have been payable by the Customer during the remainder of the term for which such services would have otherwise been provided to the Customer to be immediately due and payable (discounted to present value at six percent).

4.6.5 Notice to Company for Cancellation of Service

Customers desiring to terminate service shall provide Company thirty (30) days written notice of desire to terminate service.

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**SECTION 4 - REGULATIONS (Cont'd)****4.6 Payment Arrangements (Cont'd)****4.6.6 Customer Overpayment**

The Company will pay interest on a Customer overpayment. Customer overpayment shall mean a payment to the Company in excess of the correct charges for service when caused by erroneous billing by the Company. The rate of interest shall be the unadjusted interest rate paid on Customer deposits or the late payment penalty rate, whichever is greater. Interest shall be paid from the date when the Customer overpayment was made, adjusted for any changes in the deposit interest rate or late payment penalty rate, and compounded monthly, until the date when the overpayment is refunded. No interest shall be paid on Customer overpayments that are refunded within thirty (30) days after such overpayment is received by the Company.

**4.6.7 Cancellation of Application for Service**

- (A) The Customer may cancel an application for service prior to installation of the equipment provided that the Customer immediately pay the Company any out of pocket expenses incurred by the Company plus a cancellation fee of two times the applicable monthly recurring service charge.
- (B) Out of pocket expenses include but are not limited to the cost of the equipment, facilities, and material, the cost of installation, engineering, labor, and supervision, general and administrative expense, other disbursements, depreciation, maintenance, taxes, provision for return on investment, and any other costs associated with the special construction or arrangements.

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SECTION 4 - REGULATIONS (Cont'd)

4.7 Allowances for Interruptions in Service

4.7.1 General

- A) A credit allowance will be given when service is interrupted, except as specified below. A service is interrupted when it becomes inoperative to the Customer, e.g., the Customer is unable to transmit or receive, because of a failure of a component furnished by the Company under this Tariff.
- B) An interruption period begins when the Customer reports a service, facility or circuit to be inoperative and, if necessary, releases it for testing and repair. An interruption period ends when the service, facility or circuit is operative.
- C) If the Customer reports a service, facility or circuit to be interrupted but declines to release it for testing and repair, the service, facility or circuit is considered to be impaired but not interrupted. No credit allowances will be made for a service, facility or circuit considered by the Company to be impaired.

4.7.2 Limitations of Allowances

No credit allowance will be made for any interruption in service:

- A) Due to the negligence of or noncompliance with the provisions of this Tariff by any person or entity other than the Company, including but not limited to the Customer or other common carriers connected to the service of the Company;
- B) Due to the failure of power, equipment, systems, connections or services not provided by the Company;

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SECTION 4 - REGULATIONS (Cont'd)

4.7 Allowances for Interruptions in Service (Cont'd)

4.7.2 Limitations of Allowances (Cont'd)

- C) Due to circumstances or causes beyond the control of the Company;
- D) During any period in which the Company is not given full and free access to its facilities and equipment for the purposes of investigating and correcting interruptions;
- E) During any period in which the Customer continues to use the service on an impaired basis;
- F) During any period when the Customer has released service to the Company for maintenance purposes or for implementation of a Customer order for a change in service arrangements;
- G) That occurs or continues due to the Customer's failure to authorize replacement of any element of special construction; and
- H) That was not reported to the Company within thirty (30) days of the date that service was affected.

4.7.3 Use of Another Means of Communications

If the Customer elects to use another means of communications during the period of interruption, the Customer must pay the charges for the alternative service used.

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SECTION 4 - REGULATIONS (Cont'd)

4.7 Allowances for Interruptions in Service (Cont'd)

4.7.4 Application of Credits for Interruptions in Service

- A) Credits for interruptions in service that is provided and billed on a flat rate basis for a minimum period of at least one month, beginning on the date that billing becomes effective, shall in no event exceed an amount equivalent to the proportionate charge to the Customer for the period of service during which the event that gave rise to the claim for a credit occurred. A credit allowance is applied on a pro rata basis against the rates specified hereunder and is dependent upon the length of the interruption. Only those facilities on the interrupted portion of the circuit will receive a credit.
- B) For calculating credit allowances, every month is considered to have thirty (30) days.
- C) A credit allowance will be given for interruptions in service of 15 minutes or more. Two or more interruptions of 15 minutes or more during any one 24-hour period shall be considered as one interruption.

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SECTION 4 - REGULATIONS (Cont'd)4.7 Allowances for Interruptions in Service (Cont'd)4.7.4 Application of Credits for Interruptions in Service (Cont'd)

## D) Interruptions of 24 Hours or Less

<u>Length of Interruption</u>	<u>Interruption Period To Be Credited</u>
Less than 15 minutes	None
15 minutes up to but not including 3 hours	1/10 Day
3 hours up to but not including 6 hours	1/5 Day
6 hours up to but not including 9 hours	2/5 Day
9 hours up to but not including 12 hours	3/5 Day
12 hours up to but not including 15 hours	4/5 Day
15 hours up to but not including 24 hours	One Day

E) Continuous Interruption Over 24 Hours and Less Than 72 Hours. Interruptions over 24 hours and less than 72 hours will be credited 1/5 day for each three-hour period or fraction thereof that occurs following the expiration of the initial 24-hour period. No more than one full day's credit will be allowed for any period of 24 hours.

F) Interruptions Over 72 Hours. Interruptions over 72 hours will be credited 2 days for each full 24-hour period that occurs following the expiration of the initial 72-hour period. No more than 30 days credit will be allowed for any one-month period.

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**SECTION 4 - REGULATIONS (Cont'd)****4.7 Allowances for Interruptions in Service (Cont'd)****4.7.5 Cancellation For Service Interruption**

Cancellation or termination for service interruption is permitted only if any circuit experiences a single continuous outage of 8 hours or more or cumulative service credits equaling 16 hours in a continuous 12-month period. The right to cancel service under this provision applies only to the single circuit which has been subject to the outage or cumulative service credits.

**4.7.6 Cancellation of Service/Termination Liability**

If a Customer cancels a Service Order or terminates services before the completion of the term for any reason whatsoever other than a service interruption, Customer agrees to pay to Company termination liability charges, which are defined below. These charges shall become due and owing as of the effective date of the cancellation or termination and be payable within the period set forth in this Tariff.

**4.7.7 Termination Liability**

Customer's termination liability for cancellation of service shall be equal to:

- 1) all unpaid Non-Recurring charges reasonably expended by Company to establish service to Customer, plus;

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SECTION 4 - REGULATIONS (Cont'd)

4.7 Allowances for Interruptions in Service (Cont'd)

4.7.7 Termination Liability (Cont'd)

- 2) any disconnection, early cancellation or termination charges reasonably incurred and paid to third parties by Company on behalf of Customer, plus;
- 3) all Recurring Charges specified in the applicable Service Order for the balance of the then current term discounted at the prime rate announced in the Wall Street Journal on the third business day following the date of cancellation;
- 4) minus a reasonable allowance for costs avoided by the Company as a direct result of Customer's cancellation.

4.8 Customer Liability for Unauthorized Use of the Network

4.8.1 Unauthorized Use of the Network

- A) Unauthorized use of the Network occurs when: (1) a person or entity that does not have actual, apparent, or implied authority to use the Network, obtains the Company's services provided under this Tariff; or (2) a person or entity that otherwise has actual, apparent, or implied authority to use the Network, makes fraudulent use of the Network to obtain the Company's services provided under this Tariff, or uses specific services that are not authorized.

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**SECTION 4 - REGULATIONS (Cont'd)**

**4.8 Customer Liability for Unauthorized Use of the Network (Cont'd)**

**4.8.1 Unauthorized Use of the Network (Cont'd)**

**B) The following activities constitute fraudulent use:**

- 1) Using the Network to transmit a message, locate a person, or otherwise give or obtain information, without payment for the service;**
- 2) Using or attempting to use the Network with the intent to avoid payment, either in whole or part, of any of the Company's tariffed charges by either rearranging, tampering with, or making connections not authorized by this Tariff to any service components used to furnish the Company's services or using fraudulent means or devices, tricks, schemes, false or invalid numbers, false credit devices or electronic devices;**
- 3) Using fraudulent means or devices, tricks, schemes, false or invalid numbers, false credit devices or electronic devices to defraud or mislead callers.**

**C) Customers are advised that use of telecommunications equipment and services, including that provided under this Tariff, carries a risk of various forms of telecommunications fraud (including, but not limited to, toll and PBX fraud perpetrated by Users who gain access to a Customer's facilities, account numbers, security or authorization codes, etc.). Customers should take all necessary steps to restrict access to their facilities, including the equipment and services provided hereunder, and to detect and prevent unauthorized use of the equipment and services provided by the Company under this Tariff.**

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SECTION 4 - REGULATIONS (Cont'd)

4.8 Customer Liability for Unauthorized Use of the Network (Cont'd)

4.8.2 Liability for Unauthorized Use

- A) Except as provided for elsewhere in this Tariff, the Customer is responsible for payment of all charges for services provided under this Tariff furnished to the Customer or User. This responsibility is not changed due to any use, misuse, or abuse of the Customer's service or Customer-provided equipment by Users or other third parties, the Customer's employees, or the public.
- B) The Customer is liable for all costs incurred as a result of unauthorized use of the Network, including service charges and any direct, indirect, special, incidental, reliance, consequential, exemplary or punitive charges.
- C) The Customer is responsible for payment of any charges related to the suspension and/or termination of service, and any charges for reconnection of service, incurred as a result of unauthorized use of the Network.

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SECTION 5 - SERVICE DESCRIPTIONS AND TECHNICAL STANDARDS

5.1 Dedicated Access Service

5.1.1 Digital Data Service

A digital data service provides the duplex four-wire transmission of synchronous serial data at rates ranging from 2.4 Kbps to 64 Kbps.

5.1.2 High Capacity Service - DS1

A high capacity service is for the transmission of synchronous serial data at 1.544 Mbps or 2.048 Mbps. Intermediate Bit Rate channels in multiple increments of either 56 kbps or 64 kbps up to 1.544 Mbps are also available.

5.1.3 Very High Capacity Service - DS3

A very high capacity service is for transmission of synchronous serial data at 44.736 Mbps or higher.

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**SECTION 5 - SERVICE DESCRIPTIONS AND TECHNICAL STANDARDS (Cont'd)****5.2 Individual Case Basis Contracts**

The Company may provide any of the services offered under this tariff, or combinations of services, to Customers on a Individual Case Basis (ICB). The terms and conditions of each ICB offering are subject to the agreement of both the Customer and the Company. Such ICB offerings will be made available to similarly situated Customers in substantially similar circumstances. Rates in other sections of this tariff do not apply to Customers who agree to ICB arrangements, with respect to services within the scope of the ICB contract. The rates provided under such contract offerings are listed in the attached appendices.

Rates and terms for services that the company offers to customers may vary depending on a number of factors, which may include:

- length of circuit(s)
- volume and/or term commitments
- varying equipment types and configurations
- type of service(s)
- cost differences (labor, taxes, fees paid to LEC for interconnection, etc.)
- customer-specific billing arrangements
- other miscellaneous fees and charges (e.g. rights of way charges, franchise fees and building rights of way costs, etc.)
- market conditions and/or competitive considerations
- availability of existing AFS facilities

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**SECTION 5 - SERVICE DESCRIPTIONS AND TECHNICAL STANDARDS (Cont'd)****5.3     Dark Fiber**

Dark Fiber facilities shall normally be installed using single mode, fiber optic facilities suitable for provisioning point-to-point communications, transmitting at Customer specified bandwidths. Multimode fiber, at the Customer's request, may be used depending upon facilities availability. These Dark Fiber facilities are available only where sufficient facilities are provided in Company's network, and charges will be provided on an ICB, as filed with the Commission. Dark Fiber will be offered in capacities of one strand and above, with the fiber terminating on a standard optical patch panel. As Company does not provide the electronics, Company cannot test and monitor the facilities. When available, pricing will be on a per strand per mile basis.

When provided, the type of facility and the route of the facility will be determined by Company. Company makes no guarantee or warranty of the suitability of Dark Fiber for purposes intended by the Customer.

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**SECTION 6 - RATES & CHARGES****6.1 Dedicated Access Services****6.1.1 Digital Data Service**

<u>DDS</u>	<u>MONTHLY</u>	<u>MAXIMUM</u>	<u>NRC</u>
a. <u>2.4-9.6 Kbps</u>	\$ 86.40	\$	\$120.00
<u>First Mile</u>	\$ 42.60	\$	
<u>Each Add'l Mile</u>	\$ 0.55	\$	
b. <u>56 Kbps</u>	\$105.50	\$	\$120.00
<u>Each Add'l Mile</u>			
<u>First Mile</u>	\$42.60	\$	
<u>Each Add'l Mile</u>	\$ 0.55	\$	

<b>[NEED</b>	<b>MAXIMUM</b>	<b>RATES]</b>
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**SECTION 6 - RATES & CHARGES (Cont'd)****6.1 Dedicated Access Services (Cont'd)****6.1.2 High Capacity Service**

<u>DS1</u>	<u>MONTHLY</u>	<u>MAXIMUM</u>	<u>NRC</u>
1.544 Mbps	\$ 375.90	\$	\$
1st Mile	\$153.59	\$	
Each Add'l	\$ 18.13	\$	
Multiplexing	ICB		

**6.1.3 Very High Capacity Service**

<u>DS3</u>	<u>MONTHLY</u>	<u>MAXIMUM</u>	<u>NRC</u>
44.736 Mbps	ICB	ICB	ICB
1st Mile	ICB	ICB	
Each Add'l	ICB	ICB	
Multiplexing	ICB	ICB	

<b>NEED</b>	<b>MAXIMUM</b>	<b>RATES</b>
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**SECTION 6 - RATES & CHARGES (Cont'd)**

**6.2 Nonrecurring Charge**

Nonrecurring charges will be charged on a time and materials basis.

**6.3 Special Construction**

**6.3.1 Basis for Rates and Charges**

Rates and charges for special construction will be based on the costs incurred by the Company and may include (1) nonrecurring type charges, (2) recurring type charges, (3) termination liabilities, or (4) combinations thereof.

**6.3.2 Basis for Cost Computation**

The costs referred to in 4.1.1 may include one or more of the following items to the extent that they are applicable:

- (a) cost installed of the facilities to be provided, including estimated costs for the rearrangements of existing facilities. Cost installed includes the cost of:
  - (1) equipment and materials provided or used,
  - (2) engineering, labor and supervision,
  - (3) transportation, and
  - (4) rights-of-way;
- (b) cost of maintenance;

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**SECTION 6 - RATES & CHARGES (Cont'd)****6.3 Special Construction (Cont'd)****6.3.2 Basis for Cost Computation (Cont'd)**

- (c) depreciation on the estimated cost installed of any facilities provided, based on the anticipated useful service life of the facilities with an appropriate allowance for the estimated net salvage;
- (d) administration, taxes and uncollectible revenue on the basis of reasonable average costs for these items;
- (e) license preparation, processing and related fees;
- (f) tariff preparation, processing and related fees;
- (g) any other identifiable costs related to the facilities provided; or
- (h) an amount for return and contingencies.

**6.4 Service Calls**

When a Customer reports trouble to the Company for clearance and no trouble is found in the AFS facilities, the Customer may be responsible for payment of a charge calculated from the time AFS personnel are dispatched to the Customer Premise until the work is completed.

**6.4.1 Service Call Charge Rates**

1.	Normal AFS business hours for the first ½ hour each add'l ½ hour	<u>MONTHLY</u> \$100.00 \$ 50.00	<u>MAXIMUM</u> \$ \$
(Monday to Saturday 7:00 a.m. to 7:00 p.m., except AFS			
2.	Off-Hour AFS business hours for the first ½ hour each add'l ½ hour	<u>MONTHLY</u> \$300.00 \$ 75.00	<u>MAXIMUM</u> \$ \$
(Monday to Saturday 7:00 p.m. to 7:00 a.m., except AFS holidays)			
3.	Sundays and Holiday AFS business hours for the first ½ hour each add'l hour	<u>MONTHLY</u> \$500.00 \$125.00	<u>MAXIMUM</u> \$ \$

<b>[NEED</b>	<b>MAXIMUM</b>	<b>RATES]</b>
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**SECTION 7 - PROMOTIONAL OFFERINGS**

From time to time the Company may provide certain special promotional offerings to its customers. These offerings may be limited to certain dates, times and locations. To be eligible for the benefits of certain special promotional offerings, the customer must call a Company-provided telephone number and subscribe to each specific promotion no later than the end of the month in which a particular promotion is offered in this tariff or the customer must be called by the Company before that date and subscribe to the promotion. Any local exchange line used for Company service which is disconnected and then reconnected for the purpose of subscribing to any of the following promotions will not be eligible to receive such promotion. In addition, the customer will not receive the benefits of any promotion if there is no outbound usage associated with any ANI (and local exchange line) during the first thirty days of service following the customer's subscription to service. Customers who receive the benefits of a promotion involving services or goods of a third party, which benefits are subject to taxation by any authority, will be responsible for payment of said taxes, other than taxes based on net income, by determining the total tax obligation and developing a single rate for application to all customers who receive the promotional benefits. The specific rates, terms and conditions applicable to each promotional offering will be described below.

**Miscellaneous Promotions Offering Financial Inducements**

From time to time, the Company will offer financial inducements to new and/or existing customers who subscribe to and use new or additional Company service (s) in response to media advertising, direct mail materials, telemarketing programs and/or personal sales presentations, which offer such an inducement. The benefits offered will be provided: (1) by giving the subscriber a credit against a specified Company invoice for usage of the service (s) in question, or other one-time or recurring charges in connection with such service (s) (this may include offers of specified amounts and kinds of free calling on the Company) or, if the customer is billed for usage of Company service (s) by a local exchange company (LEC) , the credit may, if so stated, be applied against any charge for telephone service reflected on the LEC's bill; (2) by issuing to the subscriber a check payable to the subscriber, or to the Company, or to a cooperating LEC (such a check will be drawn on a bank in which the Company has funds on deposit and can be cleared or processed through normal banking channels);

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**SECTION 7 - PROMOTIONAL OFFERINGS (Cont'd)****Miscellaneous Promotions Offering Financial Inducements: (Cont'd)**

(3) by issuing to the subscriber a coupon or certificate which can be tendered to the Company, or to a LEC performing billing functions for the Company, in payment of all or a part of a future Company or LEC bill; (4) by issuing to the subscriber one or more coupons, certificates or other instruments which entitle the subscriber to receive or obtain goods or services from third party suppliers who have entered into marketing arrangements with the Company, or directly from the Company itself, or by having such goods or services delivered to the subscriber. Coupons and other devices will specify any restrictions regarding applicable services and dates. Unless otherwise specified, benefits resulting from an arrangement between the Company and a third party participating in any promotional offering will be available only to customers eligible to receive such benefits, based on their relationship with the third party participant, and such benefits further may be limited to customers located in specific areas in which the participating third party does business or otherwise elects to offer them in conjunction with the Company. If for any reason an arrangement between the Company and a third party participating with the Company in any promotional offering is terminated, the Company's obligation to provide benefits resulting from the terminated arrangement will end and the Company shall have no further obligation to customers to provide the promotional benefits. Unless otherwise specified, an individual subscriber may receive more than one of the benefits set forth above by reason of a single response to a promotional offer from the Company, and may receive additional benefits for subscribing to additional Company service(s) in response to later promotional offerings.

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**EXHIBIT F**

Petition of American Fiber System, Inc.  
for Competitive Classification

**BEFORE THE ARIZONA CORPORATION COMMISSION**

In the Matter of Application of )

**American Fiber Systems, Inc.** )

For a Certificate of Convenience and Necessity )  
to Provide Competitive Telecommunications )  
Services within the State of Arizona )

Docket No. \_\_\_\_\_

**Petition of American Fiber Systems, Inc.  
for  
Competitive Classification**

Petitioner, American Fiber Systems, Inc. (hereinafter "AFS" or "Petitioner"), a Delaware corporation, hereby files this Petition for classification of its proposed services as competitive as part of its Application for a Certificate of Convenience and Necessity ("CCN") to Provide Resold and Facilities-Based Local Exchange, Exchange Access, and Interexchange Telecommunications Service in Arizona.

**I. INTRODUCTION**

The Commission's rules require that an applicant seeking to provide competitive telecommunications services shall, as part of its Application, "petition the Commission for a determination that the intraLATA service being provided or to be provided is competitive." A.A.C. R14-2-1505.B. Pursuant to A.A.C. R14-2-1108, Petitioner provides the following information.

## **II. MARKET CONDITIONS RENDERING AFS' SERVICES COMPETITIVE**

### **A. Description of General Economic Conditions**

The market for local exchange and intraLATA toll service in exchanges in which US West provides services has been completely dominated by US West. The interexchange market enjoys more extensive competition. Competition for all telecommunications services should be expected to increase as new providers enter the market.

### **B. Number and Market Share of Alternative Providers of the Service**

Several competing carriers have entered or will soon enter the Arizona local exchange and intraLATA toll telecommunications market to compete with US West, but none are expected to obtain a sizeable market share in the near term. The Federal Communications Commission estimates that incumbent carriers retain control of more than 97% of nationwide switched access lines.<sup>2</sup> The interexchange market is divided among numerous carriers.

### **C. Affiliated Alternative Providers of the Service**

No affiliate of AFS currently provides or intends to provide facilities-based local exchange telecommunications service in the relevant market.

### **D. Ability of Alternative Providers to Make Functionally Equivalent or Substitute Services Readily Available at Competitive Rates, Terms, and Conditions**

US West and alternative providers have the ability to make and will make functionally equivalent or substitute service readily available at competitive rates, terms, and conditions.

### **E. Other Indicators of Market Power**

US West dominates the Arizona local exchange and intraLATA toll markets. It enjoys ubiquitous name recognition and an established business relationship with every customer in the market. However, the success of interexchange competition demonstrates that competitors of US West in the local exchange and intraLATA toll market may be designated as competitive.

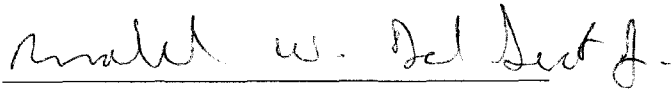
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<sup>2</sup> *Report on Local Competition, Federal Communications Commission, Common Carrier Bureau, Industry Analysis Division, December 1998, p.1.*

### III. CONCLUSION

For the reasons set forth herein, American Fiber Systems, Inc. respectfully petitions the Commission to classify AFS' proposed services to be competitive services.

Respectfully submitted,



Ronald W. Del Sesto, Jr.

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

3000 K Street, NW, Suite 300

Washington, D.C. 20007

Telephone: (202) 424-7500

Facsimile: (202) 424-7645

Counsel for American Fiber Systems, Inc.

Dated: January 8, 2001

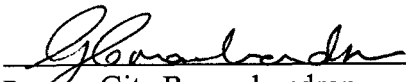


**VERIFICATION**

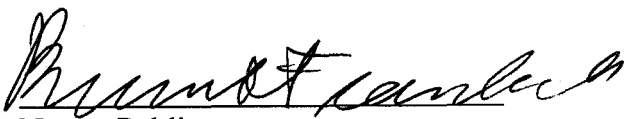
I, Gita Ramachandran, Chief Financial Officer of American Fiber Systems, Inc., am authorized to make this verification on its behalf. I have read the foregoing Application, Petition and exhibits and know the contents thereof, and the same is true to the best of my own knowledge, except as to those matters therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 8 day of December, 2000, at Rockaway New York.

  
By: Gita Ramachandran  
Title: Chief Financial Officer  
American Fiber Systems, Inc.

Subscribed and sworn to before me this 8 day of December, 2000.

  
Notary Public

My Commission Expires

4/5/2001

BRUCE T. FRANKIEWICH  
Notary Public, State of New York  
Qualified in Monroe County  
My Commission Expires Apr. 5, 2001

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